

No. 14142

United States
Court of Appeals
for the Ninth Circuit.

THOMAS M. ROBINSON, Collector of Internal
Revenue for the District of Montana,

Appellant,

vs.

NOEL ANDERSON,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
for the District of Montana

FILED

FEB 24 1954

PAUL P. O'BRIEN

CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer	12
Certificate of Clerk	317
Complaint	3
Ex. A—Claim for Refund	8
Decision	22
Designation of Record to Be Printed	319
Docket Entry Re Notice of Appeal	36
Findings of Fact and Conclusions of Law	30
Judgment	34
Motion to Dismiss, Filed November 4, 1950 ...	11
Motion to Dismiss, Filed December 13, 1952 ...	15
Names and Addresses of Attorneys of Record .	1
Notice of Appeal	35
Order Re Transmittal of Original Exhibits ...	36
Statement of Points Relied Upon on Appeal ..	320
Transcript of Proceedings	37

Witnesses :

Anderson, Agnes

—direct	193, 204
—cross	208
—redirect	214

Witnesses—(Continued)

Anderson, Noel

—direct	39, 67, 92, 108, 161, 303
—cross	133, 149, 169, 311
—redirect	155
—recross	160

Anderson, Noel J.

—direct	214
—cross	229
—redirect	235

Anderson, Robert M.

—direct	236
—cross	257
—redirect	266

Chapman, Sam

—direct	290
—cross	301

Farrell, Maurice

—direct	79, 169
—cross	86, 172
—redirect	176

Morger, Carley

—direct	281
—cross	285
—redirect	286, 288
—recross	287, 289

Witnesses—(Continued)

Morse, J. H.

—direct 270

—cross 277

Ritman, Ted

—direct 178, 183

—cross 189

—redirect 192

—recross 193

Wright, L. G.

—direct 278

—cross 281

NAMES AND ADDRESSES OF ATTORNEYS

VERNON LEWIS,
Fort Benton, Montana,
For Plaintiff.

KREST CYR,
United States Attorney,
Butte, Montana,
For Defendant.

District Court of the United States for the
District of Montana

Civil Action, File Number 490

Great Falls No. 1306

NOEL ANDERSON,

Plaintiff,

vs.

THOMAS M. ROBINSON, Collector of United
States Internal Revenue for the District of
Montana, at Helena, Montana,

Defendant.

COMPLAINT

Plaintiff complains of the defendant and for
cause of action alleges:

I.

This is an action based upon the laws of Congress,
to wit: Internal Revenue Code Sec. 322 (Sec. 29.322,
1 to 3), and is for the recovery of income tax alleged
to be erroneously and unlawfully assessed and col-
lected by Thomas M. Robinson, Collector of United
States Internal Revenue for the District of Mon-
tana at Helena, Montana. The jurisdiction of this
Court is based on Paragraph 20(a), Section 24 of
the Judicial Code as amended February 24, 1925,
(40 Stat. 972C309, 28 USCA Par. 41, (20)), whereby
concurrent jurisdiction with the United States
Court of Claims is conferred on District Courts of
the United States in suits for the recovery of income
tax even if the claim exceeds \$10,000.00

II.

That Thomas M. Robinson (hereinafter referred to as the Collector) was at all times hereinafter mentioned and now is the Collector of United States Internal Revenue for the District of Montana with his office at Helena, Montana.

III.

That on or about the 28th day of December, 1944, this Plaintiff entered into a partnership agreement with his wife, Agnes Anderson and his two sons, Noel J. Anderson and Robert M. Anderson, for the purpose of carrying on farming and livestock operations in Chouteau County, Montana. That said partnership agreement provided that Noel Anderson and Agnes Anderson should each own an undivided one-third interest in said partnership and that Noel J. Anderson and Robert M. Anderson should each own an undivided one-sixth interest in said partnership, and that each of said partners would share in the profits and be liable for any losses in the respective shares above set forth. That at the time of the formation of said partnership the said Noel Anderson, Plaintiff, and Agnes Anderson were the owners of a stock and wheat ranch with all necessary farming equipment and fully stocked with cattle. That it was agreed at the time of the formation of said partnership that a conservative value of said lands, farming equipment and cattle was \$45,000.00, and plaintiff alleges that said property at the time of the formation of said partnership was of the

reasonable value of \$45,000.00. That in consideration for the services of the two sons, Noel J. Anderson and Robert M. Anderson, in helping to build up and accumulate said property, they would be permitted to become partners in the shares heretofore stated; each to pay the sum of \$7,500.00 for the one-sixth interest in said partnership, and that the payments were to be made from their shares of the earnings of said partnership beginning on January 1, 1945. It was further agreed that the name of said partnership was to be Noel Anderson & Sons, and that each member of the partnership was to perform such services as might be necessary to properly conduct the farming and livestock operations. That each of said partners thereupon and during the year 1945 performed such services as were necessary in and about the conducting of said partnership. That at the close of the first year's operation and annually since said date Noel J. Anderson and Robert M. Anderson were each credited with one-sixth of the net earnings of said partnership for the previous year against the indebtedness owing by each to plaintiff and Agnes Anderson for the purchase of their respective shares in said partnership. That following the close of the first year's operation of said partnership and on or about January 15, 1946, this Plaintiff duly and regularly filed a partnership return for the year 1945 in which the respective shares of the net earnings of said partners were set forth, and each member of the partnership at the same time duly and regularly filed Individual Income Tax Returns in which each re-

ported the correct tax liability on said respective share of the net earnings of said partnership and each paid to the Collector the amount of tax so assessed on said Returns.

IV.

That on or about the 7th day of May, 1947, a field agent of the Bureau of Internal Revenue made a field audit of the books and records of the partnership of Noel Anderson & Sons, and of the Plaintiff, with the view of determining Plaintiff's liability for the year 1945, and in due course made a report to the Internal Revenue Agent in charge at Salt Lake City, Utah, in which he refused to recognize the validity of the partnership for income tax purposes and held that the entire earnings of said partnership was the income of plaintiff and showed an additional tax due from the Plaintiff for the year 1945; and the Plaintiff was duly advised of the findings and promptly protested the same.

V.

That in the month of May, 1949, the Commissioner of Internal Revenue in determining the issues as presented by the Field Agent and Plaintiff's protest finally determined that there was due from the Plaintiff an additional tax for the year 1945, after allowing all payments theretofore made and adding interest to November 10, 1949, at the rate allowed by law, in the sum of \$10,292.84. That the Collector promptly called upon the Plaintiff for the payment

of said additional tax and said amount was on November 10, 1949, paid by the Plaintiff to the Defendant, Thomas M. Robinson, as Collector aforesaid.

VI.

That on or about the 24th day of November, 1949, Plaintiff duly filed with the said Collector of Internal Revenue at Helena, Montana, for the consideration of the Commissioner his claim for refund for said sum illegally collected. A copy of which claim is attached hereto and marked Exhibit "A," and made a part hereof.

VII.

That on or about the 14th day of April, 1950, the Commissioner of Internal Revenue advised Plaintiff that his claim for refund had been rejected.

VIII.

That the collection of said \$10,292.84 as a balance of the tax liability for the year 1945 was erroneously and illegally collected from the Plaintiff.

IX.

That the Plaintiff is entitled to refund of the said sum of \$10,292.84 with interest at 6% per annum from the date said sum was paid, to wit: November 10, 1949, and that the Defendant is indebted to the Plaintiff for the said sum with interest as provided by law.

Wherefore, Plaintiff prays a judgement or decree

against Thomas M. Robinson, Collector of United States Internal Revenue for the District of Montana, upon the facts and law, for the principal sum of \$10,292.84 with interest at 6% per annum from November 10, 1949, together with his reasonable costs and disbursements and for such other and further relief in the premises as may be just.

/s/ VERNON E. LEWIS,
Attorney for Plaintiff.

EXHIBIT "A"

Form 843

Treasury Department
Internal Revenue Service

Claim

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse.

- Refund of Taxes Illegally, Erroneously, or Excessively Collected.
- Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
- Abatement of Tax Assessed (not applicable to estate, gift or income taxes).

State of Montana,
County of Chouteau—ss.

Name of taxpayer or purchaser of stamps: Noel Anderson.

Business address: Fort Benton, Montana.

Residence: Fort Benton, Montana.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: District of Montana, Helena, Montana.
2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from January 1, 1945, to January 1, 1946.
3. Character of assessment or tax: Deficiency on Income Tax.
4. Amount of assessment, including tax, \$10,292.84; dates of payment: November 10, 1949.
5. Date stamps were purchased from the government:
6. Amount to be refunded: "interest to be added from November 10, 1949," \$10,292.84.
7. Amount to be abated (not applicable to income, gift, or estate taxes):
8. The time within which this claim may be legally filed expires, under section 29.322-3 of Internal Revenue Code on November 10, 1951.

The deponent verily believes that this claim should be allowed for the following reasons:

Income Tax Returns for Noel Anderson and Sons were filed in due course for the year 1945. On April 7, 1947, the Internal Revenue agent made report showing certain errors in Income included in this partnership which should have been included in the Individual return of Noel Anderson. The agent also found no partnership existing for tax purposes. The undersigned resisted the additional assessment to cover the above-mentioned error and amended returns were filed for said partnership and the individual members thereof on June 16, 1947, and Noel Anderson paid an additional tax of \$3,586.82, plus interest of \$269.01, a total of \$3,855.83. After conference with the technical staff the holding of the Internal Revenue agent as to the partnership was affirmed and deficiency tax in the sum of \$12,183.70. was assessed. Credit was not given for the \$3,855.83 payment. Interest was computed \$1,964.97 and later the collector allowed a credit of \$3,855.83 leaving a balance of \$10,292.84 which Noel Anderson paid on November 10, 1949. This claim for refund is based upon the amended returns as filed on June 16, 1947. Taxpayer insists that a good and valid partnership was organized and began business on January 1, 1945, under the name of Noel Anderson and Sons. That said partnership consists of himself $\frac{1}{3}$ interest, his wife, Agnes Anderson $\frac{1}{3}$ interest, his son Noel J. Anderson $\frac{1}{6}$ interest, and his son Robert Anderson $\frac{1}{6}$ interest. That said partnership has

been in existence and has actively carried on farming and livestock business at all times since January 1, 1945. That each partner has contributed capital and services in each and every year since said date and that said partnership should be allowed for income tax purposes and that the above-mentioned amount should be refunded to the undersigned.

/s/ NOEL ANDERSON.

Subscribed and sworn to before me this 23rd day of November, 1949.

[Seal] W. S. TOWNER,

Notary Public for the State of Montana. Residing
at Fort Benton, Montana.

My commission expires Jan. 5, 1952.

[Endorsed]: Filed September 8, 1950.

[Title of District Court and Cause.]

MOTION TO DISMISS

Comes now the defendant above named and moves the Court that this cause be dismissed upon the following grounds, to wit:

That the complaint herein fails to state a claim upon which relief can be granted.

/s/ JOHN B. TANSIL,

United States Attorney for
the District of Montana;

/s/ HARLOW PEASE,
Assistant United States Attorney for the District
of Montana;

/s/ H. D. CARMICHAEL,
Assistant United States Attorney for the District
of Montana, Attorneys for Defendant.

[Endorsed]: Filed November 4, 1950.

[Title of District Court and Cause.]

ANSWER

Thomas M. Robinson, Collector of Internal Revenue for the District of Montana, by his attorney John B. Tansil, United States Attorney for the District of Montana, answering the allegations in plaintiff's complaint herein:

First

Denies the allegations of such complaint not admitted; qualified or otherwise specifically referred to below:

Second

Further answering the complaint:

I.

Denies the allegations in paragraph I, but admits that the Court has jurisdiction in this civil action to recover internal revenue tax pursuant to express authority contained in Title 28, U.S.C., Section 1340

and Section 3772(a)(1) and (2) of the Internal Revenue Code.

II.

Denies the allegations in paragraph II, except to admit that Thomas M. Robinson is now and has been since July 1, 1947, the Collector of Internal Revenue for the District of Montana with his office at Helena, Montana.

III.

Denies the allegations in paragraph III, except to admit (1) that a partnership return of income for the calendar year 1945 on Treasury Form 1065 was filed by Noel Anderson & Sons, Ft. Benton, Montana, on January 15, 1946, reporting an ordinary net income of \$34,448.21 and showing partners' shares of income as follows:

(a) Noel Anderson	\$11,482.77
(b) Agnes Anderson	11,482.77
(c) Noel Anderson, Jr.	5,741.38
(d) Robert Anderson	5,741.38
	<hr/>
Total	\$34,448.30

(2) That on January 15, 1946, each of the four individuals named above separately filed a federal income tax return for the calendar year 1945 and therein reported as ordinary net income the same amount which appears after their names in the above tabulation; (3) that the individual federal income tax return filed by the plaintiff reported a total tax of \$2,984.62, which was paid January 30,

1946; that the return filed by Agnes Anderson also reported a tax of \$2,984.62, which was paid January 30, 1946; and that the separate returns filed by Noel Anderson, Jr., and by Robert M. Anderson each reported a tax of \$1,174.90 and these sums were paid January 30, 1946.

IV.

Admits the allegations in paragraph IV, except to aver that the word "May" appearing in the first line of paragraph IV of the complaint should read "April."

V.

Denies the allegations in paragraph V, except to admit that the defendant, pursuant to the assessment by the Commissioner of Internal Revenue of a deficiency against the plaintiff upon his individual federal income tax return for the calendar year 1945, did promptly call upon the plaintiff for the payment of the sum of \$10,292.84, which sum was paid by the plaintiff to the defendant on November 16, 1949.

VI.

Denies the allegations in paragraph VI, except to admit that Exhibit "A" which is attached to the complaint is a copy of a claim for refund which the plaintiff filed with the defendant on November 25, 1949. Any statement in Exhibit "A" not expressly admitted in this answer is specifically denied.

VII.

Denies the allegations of paragraphs VII, VIII, and IX of plaintiff's complaint.

Wherefore, the defendant, having fully answered plaintiff's complaint, prays that he take nothing in this suit; that his complaint be dismissed; and that the defendant be allowed his costs herein.

/s/ JOHN B. TANSIL,
United States Attorney for
the District of Montana;

/s/ HARLOW PEASE,
Assistant United States Attorney for the District
of Montana;

/s/ H. D. CARMICHAEL,
Assistant United States Attorney for the District
of Montana, Attorneys for Defendant.

[Endorsed]: Filed December 8, 1950.

[Title of District Court and Cause.]

MOTION TO DISMISS

Civil No. 1306

Now comes the defendant, Thomas M. Robinson, by and through his attorneys of record, Emmett C. Angland and William H. Bowen, at the close of the plaintiff's evidence and moves the court, in accordance with Rule 41(b) of the Federal Rules of Civil Procedure, to dismiss the action upon the ground

that upon the facts and the law the plaintiff has shown no right to relief on the grounds:

1. The determination of the Commissioner of Internal Revenue that the wife and two sons were not partners puts the burden of proof upon this plaintiff to convince the Court that the Commissioner's determination was wrong.

Welch vs. Helvering,
290 U.S. 111.

Commissioner vs. Heininger,
320 U.S. 467.

2. Upon motion to dismiss in non-jury cases after conclusion of the plaintiff's evidence it is not sufficient that the plaintiff establish a prima facie case inasmuch as the adjudication is upon the merits, but in this Circuit it must be made to appear from a preponderance of the evidence that the Commissioner's determination was in error and, further that in fact a present partnership existed.

Barr vs. Equitable Life Assur. Soc.,
(C. A. 9th) 149 F. 2d 634.

Defense Supplies Corp vs. Lawrence Warehouse Co.,
(N. D. Cal.) 67 F. Supp. 16.

Comment, 9 F. Rules Service, p. 37.

3. To satisfy his burden of proving that a present partnership in fact existed the plaintiff must show from all the facts adduced that "the parties

in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise. (Emphasis added.)

Commissioner vs. Culbertson,
337 U.S. 733, 742.

Harkness vs. Commissioner,
(C.A. 9th) 193 F. 2d 655.

Toor vs. Westover,
(S.D. Cal.) 94 F. Supp. 860.

The Culbertson criteria are well known and are applied to the facts, or the absence of any showing in the case at bar, as follows:

(a.) The agreement: No evidence is in the record of a partnership agreement as of January 1, 1945, other than the interested testimony of the family parties themselves.

(b.) The conduct of the partners in execution of the asserted partnership agreement: There is no clearer concept relative to the determination of the question of intent than that "People intend the consequences of their acts." *Lusthaus vs. Commissioner, Reed, J. dissenting*, 327 U.S. 293, 302. Yet here not one iota of evidence has been introduced by this plaintiff to show dealings with third parties, either by himself or by any of the alleged partners during the year 1945. To the contrary, it is clear from the records of the Chouteau County Bank, the Montana State Livestock Commission, and the Adams Implement Company of Fort Benton, to-

gether with plaintiff's own admissions that County property taxes were paid and business with the Fort Benton A.A.A. Office and the Greeley Elevator Company was carried on in either his own name, the name of A. E. Anderson or A. E. Anderson and Son, and that as late as 1946 and 1947 plaintiff was still making application with the Montana Equalization Board for gas refunds in his own name, rather than in the name of Noel Anderson and Sons.

(c.) Their statements: Plaintiff said that one of the purposes in forming the asserted partnership was to give his sons something more than wages. He also admitted that he was aware of and considered the tax savings advantage of splitting his income four ways through the vehicle of a partnership. Considering the restrictions plaintiff placed on the other alleged partners regarding their withdrawal of purported partnership funds, which restrictions continued until their respective interests were paid for, together with the use they put these monies to, plaintiff's domination of the family farm is clear. With regard to the restriction on use of the funds see subparagraph (g), *infra*.

(d.) Testimony of disinterested witnesses: Other than the testimony of their neighbor, Mr. Ritman, plaintiff made no effort to get into the record this very important factor. And yet, when questioned on cross-examination it became clear that Mr. Ritman having been in the Armed Service from early 1942 until the middle of September, 1945, could not recall and admitted that he did not transact any

business with the Anderson family as a partnership in 1945.

(e.) Relationship of the parties: The family relation of the Andersons, in the language of the Culbertson case is "a warning that things may not be what they seem," *Id.* p. 746; and said family relationship will be and should be carefully scrutinized. "* * * the family relationship often makes it possible for one to shift tax incidence by surface changes of ownership without disturbing in the least his dominion and control over the subject of the gift or the purposes for which the income from the property is used." *Id.* 746. See also subparagraph (g), *infra*.

(f.) 1. Their respective abilities: Remembering that the boys were 17 and 18, respectively, during the period in issue and were doing ordinary field work when they were there to work, and that Mrs. Anderson was a fine but average housewife, defendant respectfully asks the Court to judicially know that these three alleged partners contributed no more to the family farm than they would have without assuming the habiliment of a partnership operation and no more than any other farm family does the country over.

2. Capital contributions: There is completely lacking with respect to this very important factor, *Harkness vs. Commissioner*, *supra*, any evidence of a present contribution of any capital by anyone other than plaintiff; but, to the contrary, it clearly

appears that the sons and Mrs. Anderson would have nothing to contribute to the partnership until they earned it and that was not until May 15, 1951.

(g.) Actual control of income and the purposes for which it was used: It is patently clear in the year 1945 that the plaintiff had complete control of the allocation of income earned. He was the only person certified to draw against the account of A. E. Anderson and Son maintained with the Chouteau County Bank, which account was used that year, by his own admission, for alleged Noel Anderson and Sons' purposes. There was no account in existence in the name of Noel Anderson and Sons until May 1, 1946, and only plaintiff and his wife was certified to draw against it. It is also clear from the testimony of the boys and of Mrs. Anderson that their purported distributive shares of the partnership income was used for their necessities; and as to the boys, particularly, could not be used for anything else until 1951, the date that they were deeded a one-sixth interest in the family farm.

(h.) Business purpose: There is not one scintilla of evidence to shows a business purpose herein for the establishment of the alleged partnership, but, to the contrary, by plaintiff's own admission he was considering the tax advantages that would derive therefrom together with a purpose to give the boys something more than wages, both of which are purely personal.

(i.) Present conduct of the enterprise as a partnership: The Culbertson and the Harkness cases

make it abundantly clear that the crucial question in every case is whether the asserted partnership arrangement was really and truly intended to begin at once or whether it was to begin at some future time. An intent to form a partnership at a future time, when, herein for example, Noel, Jr., would be home from the Armed Service, Robert would be home from College, and Mrs. Anderson, Noel, Jr., and Robert would have earned their respective interests in the family farm so that they could make a contribution to capital, and when probate of the Estate of A. E. Anderson was finally settled, is not sufficient to satisfy the requirements of intent presently to join in the conduct of the partnership enterprise. There is no evidence in the record, other than the families' interested statements of what they intended, to prove present action as a partnership. Good faith intent in the future is not enough.

Respectfully submitted.

/s/ EMMETT C. ANGLAND,

/s/ WILLIAM H. BOWEN,

Attorneys for Defendant.

[Endorsed]: Filed December 13, 1952.

[Title of District Court and Cause.]

DECISION

This is an action brought by the plaintiff as a taxpayer for recovery of an income tax paid for the year 1945. The principal question for determination seems to be whether Noel Anderson, the plaintiff, and his family, consisting of his wife and his two sons, entered into and put in operation a family partnership, in good faith, for the conduct of their farming and ranching business and the raising of livestock in Chouteau County, State of Montana, for the year 1945.

Noel Anderson for many years was a member of a family partnership with his father, under the firm name of A. E. Anderson and Son, and was engaged in farming and raising livestock near Fort Benton, in the County and State aforesaid, which partnership was recognized and apparently approved by the Bureau of Internal Revenue; the lands and personal property occupied and possessed by the partnership stood in the name of A. E. Anderson, the father; the business of the partnership was usually transacted in his name, the bank account was in his name, although Noel Anderson had his own private bank account which he afterwards changed to a joint account with his wife, Agnes, both having the right to draw checks against this account.

A. E. Anderson, the father, died in December, 1943, and thereafter Noel Anderson carried on in the name of the father and son partnership while the estate of the father and affairs of the partner-

ship were in process of adjustment and settlement. But there was nothing in this situation, so far as the court can find, to hinder or delay Noel Anderson and his family from entering into a family partnership; it was their responsibility to carry on the farming and ranching operations and take care of the livestock. Aside from Noel Anderson the only persons interested as heirs of A. E. Anderson were the widow and a daughter, from whom purchases were made by Noel Anderson of their respective interests in the estate, consequently, the care and management of all such property interests were undertaken and carried out by Noel Anderson, his wife, Agnes, and his sons, Robert M. and Noel J. Anderson, who comprised the partnership of Noel Anderson and Sons.

There was nothing new or novel about having a family partnership in the Anderson family; the father and son had carried on such a partnership in the name of A. E. Anderson & Son for about nine years, and it was quite natural to expect that upon the death of the father another family partnership would succeed the old one. It is generally known that the principal farming operations are carried on in the spring, summer and fall, and the sons were there in 1944 to prepare the soil and put in the crops for 1945, and in 1945 Robert was there to put in crops for 1946, and substitute for his brother, Noel, Jr., who was then in the Armed Services of his country.

The court was much impressed with the appearance of these upstanding young men while tes-

tifying, as was also the case in the instance of the parents who preceded them, who have been respected citizens of Chouteau County for many years. After all it's what you believe, as the court remarked during the trial, and now upon a consideration of all the evidence, the court has thus far been unable to find fault in the testimony of members of this family or in their manner of giving it, and finds corroboration in respect to labor they performed in furtherance of their claim of formation of partnership for 1945. It would seem from the evidence that the "farm chores," mentioned by counsel for defendant, were well done by all members of the partnership. As it appears to the court the partnership involved extensive wheat operations of such an extent as to require the attention and constant services of the members of the partnership, and hired help in addition, so that it was in no sense merely a matter involving so-called "farm chores."

Grave account is made of the fact that transactions are found to have been conducted in the name of A. E. Anderson & Son, A. E. Anderson, Noel Anderson, Agnes Anderson, instead of in the name of Noel Anderson and Sons in 1945. What does the record show? Importantly it shows the defendant admits good faith on the part of the Anderson family "to create a partnership at some future time." If good faith is admitted, after hearing the testimony of the Anderson family, and all members thereof declare, and established from their partnership records and other sources, that the partnership was to become effective and was in operation during

the year 1945, how can the admission of good faith be consistently reconciled with a rejection of the evidence on the subject of time when the partnership was established and in operation? The court believes from the testimony of the Andersons and others living in their neighborhood, and from the records of the partnership, that good faith and honesty of purpose has been disclosed, and that it would be difficult for one with an open mind to note the appearance of those witnesses on the stand and their manner of testifying without being impressed with their sincerity, and at the same time taking into account any self interest they might have in the result.

It appears from the testimony of members of the Anderson family that the new partnership was discussed and planned in April, 1944, and a final council was held in December, during Christmas week of that year, in which the plan was consummated with Noel, Agnes and Robert M. Anderson taking part in the agreement, which was subsequently, in January, 1945, ratified by Noel J. Anderson. The evidence goes into detail as to the interests of each member of the family in the partnership; it is not necessary to repeat it here, all agreed and were satisfied with their respective shares in the partnership, and the evidence is convincing as to the substantial contributions of each member of the family to the partnership.

On the subject of taxes for 1945 and 1946 it appears that taxes on the partnership property were assessed and paid in the name of A. E. Anderson

and Son, since all the property stood in the name of A. E. Anderson, his estate still being in process of administration, but from Exhibit 9-E it also appears that taxes for 1945 were charged to the partnership expense of Noel Anderson & Sons; and the sale of wheat for 1945 amounting to \$28,159.81 is also credited in the account of that partnership. Payments to Mrs. Aleta P. Anderson and Mrs. Finney for their shares in the ranch property from the joint account of Noel and Agnes Anderson would seem to indicate a contribution from each to the new partnership, and the books of the new partnership furnish proof that it was in operation during the year 1945.

Several authorities cited by counsel unquestionably support the position taken by the court on the facts presented in this case. Probably the leading decision on the subject of family partnerships is found in the case of *Commissioner vs. Culbertson*, 337 U.S. 733, and on reading this decision, one is bound to be impressed with its close application to the situation here; it was held there, with other expressions of like tenor: "The question is not whether the services or capital contributed by a partner are of sufficient importance to meet some objective standard supposedly established by the *Tower* case, but whether, considering all the facts—the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contributions, the actual control of income and the

purposes for which it was used, and any other facts throwing light on their true intent—the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise * * *. If, upon a consideration of all the facts, it is found that the partners joined together in good faith to conduct a business, having agreed that the services or capital to be contributed presently by each is of such value to the partnership that the contributor should participate in the distribution of profits, that is sufficient.”

For the purpose of carrying on the business of farming, ranching and raising livestock, in which the members of the Anderson family had been engaged for many years, Noel Anderson, his wife and two sons joined together their possessions and labor to continue their life work wherein they were to share in a community of interest of all profits and losses to the extent of their respective holdings in the partnership, thus following a well established precedent in the Anderson family.

Reliance has been placed by defendant upon the decision of our Circuit Court of Appeals in the Harkness case (*Harkness vs. Commissioner*, 193 Fed. (2) 656), by Circuit Judge Pope wherein the question raised was whether there had been established a valid family partnership for tax purposes by a husband and wife and their two children for the year 1943. The errors alleged by the petitioners related largely to an alleged failure of the tax court to find facts concerning their acts and conduct for the years 1944 to 1947. The Tax Court held

that neither the son nor the daughter were present during the year in question and therefore not able to assist in the management of the business until after 1943, nor until 1946; that this would be the case was contemplated when the articles of partnership were drawn and signed in December, 1942, although they recited that the partnership composed of Harkness, Sr., his wife and two children, should commence January 1st, 1943.

The facts in the case above noted are entirely different in the instant case; here the work in furthering the interests of the partnership commenced in 1944, following the discussion of the plan for such purpose in April of that year, which was fully consummated in December of the same year; during that year the sons, Robert M. and Noel J., took charge of farming and ranching operations and care of the livestock, and sowed eleven hundred acres to grain for the year 1945, and in 1945, Robert, when his brother was absent in the Army, performed the same work and again sowed the grain in 1945 for the year 1946, and the wife of Noel Anderson, Sr., helped in different ways in both years in carrying on farming and ranching operations; she supervised cooking and other household duties for the family and hired help, drove tractor and hauled grain, and none of the family drew any wages for such services, and it all applied on the partnership interests, and like conditions existed and work of the partnership progressed during the years 1946, 1947 and henceforth to date of trial. During the years 1944 and 1945, Noel An-

derson, Sr., was not in good health but he assisted in advising and over-seeing the work of his sons. Operations were carried on during 1945 according to the plan agreed upon in forming the partnership, and it has continued ever since as above noted.

The petitioners in the Harkness case contended that happenings subsequent to the year in question should be considered in determining the issue of good faith and intent, and that would seem to be necessary in this case in view of the work performed by the members of the partnership during the years 1944 and 1945, which finds corroboration in the testimony of their neighbors.

Another contention of the Tax Court in the Harkness case was that there could be no valid partnership within the meaning of the tax laws for the reason that the children were not there in 1943 and therefore could not contribute "original capital" or "vital services," and that it was not contemplated they would do so; an entirely different state of facts existed there than is found in the Anderson case in that respect. As Judge Pope said in referring to the Culbertson case "the Supreme Court itself three times mentioned the contribution of capital and services as some of the circumstances to be taken into consideration in arriving at the question of bona fide intent." It might be said here that there would have been no income or profits for the years 1945 and 1946 had it not been for the services rendered by the four partners as above outlined.

It was said in the Harkness case: "But the crucial question was whether the new arrangement

was really and truly to begin at once, or at some future date, when the desired help of the young men would become available." There was no question of availability of help by the young men in the Anderson case—both were available to pave the way for the income and profits for 1945, and Robert carried the burden for himself and his brother in 1945 for the income and profits for 1946.

Other authorities could be cited sustaining the views of the court herein, but enough seems to have been said to justify the court in this case in finding for the plaintiffs, and accordingly such is the decision of the court herein. Findings of fact and conclusions of law, and form of judgment may be submitted. Exceptions allowed counsel.

/s/ CHARLES N. PRAY,
Judge.

[Endorsed]: Filed June 20, 1953.

[Title of District Court and Cause.]

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Civil No. 1306

This cause duly came on for trial without a jury on December 11, 1952. Plaintiff appeared herein in person and by his attorney and defendant appeared herein by his attorneys. Evidence was introduced by the parties hereto and briefs having been submitted under the order of the Court and the Court

having taken the same under advisement, now, upon consideration of the testimony, the stipulation of the parties, and the exhibits introduced in evidence and pursuant to the Federal Rules of Civil Procedure, the Court finds the facts specially and states its conclusions of law thereon with direction for entry of the appropriate judgment as set forth below:

Findings of Fact

1. That the formation of a family partnership for the purpose of conducting farming, ranching and livestock operations in Chouteau County, Montana, was discussed and planned by members of the plaintiff's family in the month of April, 1944. That the plan was consummated at a family council held during the latter part of December, 1944, at which time Noel Anderson and his wife, Agnes Anderson, and a son, Robert M. Anderson, made an agreement which was subsequently, namely in the month of January, 1945, ratified by Noel J. Anderson, another son. That said agreement provided for the interest and shares of each member of the partnership. That the said Noel Anderson, Agnes Anderson, Robert M. Anderson and Noel J. Anderson each made substantial contributions to said partnership during the time involved in this action. That Robert M. Anderson and Noel J. Anderson prepared the soil and put in the crops in 1944 for the 1945 crop. That Agnes Anderson supervised the cooking for hired help, drove a tractor and hauled grain during the year 1945 and that Noel Anderson, who was in poor health at the time, assisted in advising and over-

seeing the work of his sons. That the farming and ranching operations during the year 1944 and during the entire year of 1945 were carried on by said partnership in good faith and have so continued ever since.

2. That a partnership income tax return for the year 1945 was filed in January of 1946 in the name of Noel Anderson and Sons setting forth the share of the net earnings of Noel Anderson, Agnes Anderson, Noel J. Anderson, and Robert M. Anderson in said partnership and each member of the said partnership filed individual income tax returns for said year which returns were later audited by the Bureau of Internal Revenue and as a result of said audit the partnership was, by the said Bureau, held invalid for tax purposes and the income tax on the entire earnings of said partnership for the year 1945 were assessed to the Plaintiff. That the defendant herein thereupon called upon the plaintiff to pay an additional tax of \$10,292.84 which amount was paid by the plaintiff to the defendant on November 10, 1949.

3. That a claim for refund for said amount so paid was duly and timely filed by the plaintiff in the office of the defendant as Collector of Internal Revenue at Helena, Montana. That said claim for refund was rejected by the Commissioner of Internal Revenue on April 14, 1950.

Conclusions of Law

The Court concludes:

1. That this Court has jurisdiction of this cause and of the parties thereto under the express authority contained in Title 28 U.S.C., Section 1340 and Section 3772(a)(1) and (2) of the Internal Revenue Code.

2. That the plaintiff, Noel Anderson, Agnes Anderson, Noel J. Anderson and Robert M. Anderson joined together as partners in good faith in the months of December of 1944 and January of 1945 for the purpose of conducting a farming, ranching and livestock business in Chouteau County, Montana. That said partnership conducted said operations during the entire year of 1945 and that each of the members of said partnership shared in said operations and the profits thereof.

3. That the sum of \$10,292.84 was erroneously and illegally collected from the plaintiff by the defendant on November 10, 1949.

4. That the plaintiff, Noel Anderson, is entitled to judgment against the defendant, Thomas M. Robinson, Collector (now Director) of Internal Revenue for the District of Montana, for the sum of \$10,292.84 with interest thereon at the rate of six per cent per annum from November 10, 1949.

Dated June 30, 1953.

/s/ CHARLES N. PRAY,
Judge.

[Endorsed]: Filed June 30, 1953.

District Court of the United States for
the District of Montana

Civil No. 1306

NOEL ANDERSON,

Plaintiff,

vs.

THOMAS M. ROBINSON, Collector of United
States Internal Revenue for the District of
Montana, at Helena, Montana,

Defendant.

JUDGMENT

This cause came on regularly for trial on the 11th day of December, 1952, Vernon E. Lewis appearing as counsel for plaintiff and William H. Bowen, Special Assistant to the Attorney General, and Emmett C. Angland, Assistant United States Attorney, appearing for the defendant. The cause was tried before the Court without a jury whereupon witnesses upon the part of the plaintiff and defendant were duly sworn and examined and documentary evidence introduced by the respective parties; and the evidence being closed, the cause was submitted to the Court for consideration and decision, and, after due deliberation thereon, the Court having filed its decision, now files its Findings of Fact and Conclusions of Law in writing, and orders that Judgment be entered herein in favor of plaintiff in accordance therewith.

Wherefore, by reason of the law and the findings

aforesaid, It Is Ordered, Adjudged and Decreed, that Noel Anderson, the plaintiff, do have and recover of and from Thomas M. Robinson, Collector (now Director) of Internal Revenue for the District of Montana, the sum of Ten Thousand Two Hundred Ninety-two and 84/100 Dollars (\$10,292.84) with interest thereon at the rate of six per cent per annum from November 10, 1949, amounting to the sum of \$2,247.23, together with interest thereon at the rate of six per cent per annum from the date hereof until paid, together with plaintiff's costs and disbursements incurred in this action amounting to the sum of Four Hundred Forty-four and 31/100 Dollars (\$444.31).

Dated June 30, 1953.

/s/ CHARLES N. PRAY,
Judge.

[Endorsed]: Filed and entered June 30, 1953.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the defendant above named, Thomas M. Robinson, Collector of United States Internal Revenue for the District of Montana, at Helena Montana, hereby appeals to the Court of Appeals for the Ninth Circuit from that certain final Judgment entered in this action on the 30th day of June, 1953, which is in favor of the

plaintiff, Noel Anderson, and from the whole of said Judgment.

Dated August 26, 1953.

/s/ KREST CYR,

United States Attorney for
the District of Montana.

[Endorsed]: Filed August 27, 1953.

[Title of District Court and Cause.]

DOCKET ENTRY RE NOTICE OF APPEAL
Aug. 27, 1953. Filed Defendant's Notice of Appeal;
Mailed copy Notice of Appeal to
Plaintiff's counsel.

Attest, A True Copy:

[Seal] H. H. WALKER,
Clerk;

By /s/ SUSAN L. ROSMAN,
Deputy.

[Title of District Court and Cause.]

ORDER FOR TRANSMITTAL FOR ORIGINAL
EXHIBITS TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH
CIRCUIT

On motion of the United States Attorney,
It Is Ordered that the Clerk of the United States
District Court for Montana transmit the original

exhibits introduced at the trial of this cause to the United States Court of Appeals for the Ninth Circuit as a part of the record on appeal herein.

Dated this 19th day of November, 1953.

/s/ CHARLES N. PRAY,
United States District Judge.

[Endorsed]: Filed and entered November 19, 1953.

In the District Court of the United States, in and for the District of Montana, Great Falls Division

Civil No. 1306

NOEL ANDERSON,

Plaintiff,

vs.

THOMAS M. ROBINSON, Collector of Internal Revenue for the District of Montana, at Helena, Montana,

Defendant.

TRANSCRIPT OF PROCEEDINGS

Before: Honorable Charles N. Pray,
United States District Judge.

For Plaintiff:

VERNON LEWIS,
Attorney at Law.

For Defendant:

WILLIAM H. BOWEN,

Special Assistant to the Attorney General;

EMMETT C. ANGLAND,

Assistant United States Attorney.

The above-entitled cause came on regularly for hearing in the District Court of the United States, in and for the District of Montana, Great Falls Division, in the Federal Post Office Building at Great Falls, Montana, on December 11, 12, and 13, 1952, before the Honorable Charles N. Pray, Judge Presiding, without a jury;

Whereupon, the following proceedings were had and done, to wit:

The Court: Gentlemen, are you ready to proceed with this case set for trial?

Mr. Lewis: Plaintiff is ready.

Mr. Angland: The defendant is ready. Now at this time, may it please the court, I would like to move the admission of William H. Bowen, Special Assistant to the Attorney General, as one of counsel for the defendant in this case.

The Court: In this case?

Mr. Angland: Yes, your Honor.

The Court: Very well, he may be admitted for that purpose and you may proceed with your case, Mr. Lewis.

Mr. Angland: Would the court like some statement as to the nature of this case before we proceed with evidence?

The Court: I think we both understand what it

is about; this is one of these family partnerships we have heard about all over the United States in the last few months. [7*]

Mr. Lewis: I had thought that a statement was not necessary, if the Court please, because the facts are fairly well set out in the complaint.

Mr. Angland: It isn't necessary; it was just a matter of a suggestion.

The Court: It isn't necessary. We might just as well proceed with the proof right now. I know what the pleadings contain.

Mr. Lewis: Call Mr. Noel Anderson.

NOEL ANDERSON

plaintiff, was called as a witness, and testified as follows, having been first duly sworn:

Direct Examination

By Mr. Lewis:

Q. Will you please state your name?

A. Noel Anderson.

Q. You are the plaintiff in this action?

A. I am.

Q. Where do you reside, Mr. Anderson?

A. Fort Benton, Montana.

Q. And what is your occupation?

A. Rancher.

Q. How long have you been such?

A. All my life.

Q. And do you have your land and farming operations in Chouteau County, Montana? [8]

*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

(Testimony of Noel Anderson.)

Q. Where are they located in a general way, Mr. Anderson?

A. Approximately 20 miles northeast of Fort Benton.

Q. On which side of the Missouri River?

A. South side of the Missouri River.

Q. And if you were traveling from Fort Benton to your ranch, what way would you take in the summer time?

A. In the summer time we drive to Loma, cross the Missouri river on a ferry, beyond there probably about seven miles east to the ranch.

Q. And your farm lands are then on the banks?

A. Yes.

Q. Are there any river bottom lands involved in this case? A. There are.

Q. What was the name of the river bottom place?

A. It would be the old W. S. Kingsbury ranch.

Q. Commonly known as Bill Kingsbury?

A. That is right.

Q. And that is a part of the land involved in this case, is it? A. That is correct.

Q. Mr. Anderson, when did you start farming on this land in Chouteau County?

A. My father started there and I worked with him in the spring of '17.

Q. His name was A. E. Anderson? [9]

A. That is correct.

Q. He is not living now? A. He is not.

Q. When did he die?

(Testimony of Noel Anderson.)

A. He died on Christmas Eve, '43.

Q. During the time from '17 to the time of your father's death were you engaged in your farm and ranch operations continuously?

A. Except for the time I was in school.

Q. And did you ever have a partnership with your father in this farm and ranch operation?

A. Starting with '35.

Q. And from that time on to the time of your father's death was that partnership then existing?

A. It was.

Q. And operating? A. It was.

Q. When you started what, you and your father there what was the extent of your farming operations, did you own any land?

A. Very little, when we first started it was all leased land.

Q. A good deal of it leased from the state of Montana? A. It was.

Q. And do you still have that land?

A. We do. [10]

Q. Under lease from the state of Montana?

A. Yes.

Q. And did you have very much property or equipment?

A. We had some farming equipment such as it was; obsolete I would call it.

Q. When you came you brought that with you and it was old style farm machinery, I take it?

A. It was.

(Testimony of Noel Anderson.)

Q. Now when you started in did you have very great acreage under cultivation?

A. Well when we started in the land was all virgin land; it had never been broken.

Q. And you built the place up from raw prairie?

A. That is right.

Q. Mr. Anderson, did you and your father file federal income tax returns during the period of that partnership? A. We did.

Q. And do you know about when you filed your first partnership return?

Mr. Angland: Just a minute, your Honor, to which we will object; the partnership existing between A. E. Anderson and Noel Anderson is not in issue in this matter and any partnership existing at that time would not tend to prove or disprove any issue presented in this case. [11]

The Court: Well, it might have some reference on the question of intent; it is certainly laying a foundation, a sort of historical foundation.

Mr. Lewis: That is the purpose of it for showing intent.

The Court: I think it should be allowed on that score.

Q. Mr. Anderson, about when was the first partnership return filed?

A. I am not sure whether it was '35 or '36; it was one of them.

Q. Now were those partnership returns filed in a name, a partnership name? A. They were.

Q. And what was that partnership name?

(Testimony of Noel Anderson.)

A. A. E. Anderson and Son.

Q. Were those partnership returns ever audited by the Bureau of Internal Revenue?

A. They were.

Q. What have you to say about the partnership returns from 1941 on to the death of your father as to when they were audited by the Bureau of Internal Revenue?

A. They were audited; they were checked.

Q. And during this entire period of the partnership in whose name was the property? [12]

A. The property was all in my father's name.

Q. And did it continue in your father's name up until the time of his death? A. It did.

Q. In whose name was the bank account?

A. It was in my father's name.

Q. And did it so continue up until the time of his death? A. It did.

Q. Did you have a right to write checks on that account? A. I did.

Q. State whether or not all of the property of the A. E. Anderson & Son partnership during the entire time was in the name of your father?

A. It was.

Q. And was a lot of the business of the partnership conducted in his name? A. It was.

Q. Now in the audit of these returns, Mr. Anderson, was the partnership of your father and you allowed? A. It was.

Q. Was it ever disallowed? A. It was not.

Q. Now during the time of the old partnership,

(Testimony of Noel Anderson.)

the A. E. Anderson & Son partnership, did you draw money from the partnership from time to time?

A. I did. [13]

Q. And what did you do with that money?

A. That money was for my personal needs.

Q. And did you have a bank account?

A. I did.

Q. What sort of a bank account was it?

A. Up until 1941 it was my personal account.

Q. And then what happened in '41?

A. It became a joint account.

Q. With whom? A. With my wife.

Q. Agnes Anderson? A. That is correct.

Q. Have you kept that account continuously in the bank since then? A. We have.

Q. Was it in the Chouteau County Bank at Fort Benton? A. That is correct.

Q. And when you drew money from the old partnership, I mean by that A. E. Anderson & Son, was it deposited in the bank usually? A. Yes.

Q. And from the time of the opening of the joint bank account with your wife in December, 1941, were your earnings from the old partnership deposited in that account? A. Yes. [14]

Q. When were you married, Mr. Anderson?

A. July 1st, 1925.

Q. And your wife's name is Agnes Anderson?

A. That is right.

Q. Now where has the family made its home, where did it make its home from the time of your marriage up to the time of, well, the early 40's?

(Testimony of Noel Anderson.)

A. Up until the fall of 1948 we made our home continuously on the ranch.

Q. And during that period the children were born? A. That is right.

Q. And what were the names of your children?

A. Noel Junior Anderson, Robert M. Anderson, Anna Jean Anderson and A. Evonne Anderson.

Q. Noel Junior Anderson, Noel J. Anderson and Robert M. Anderson are involved in the partnership, are they, that is involved in this case?

A. That is right.

Q. Now did those boys grow up on the ranch?

A. They did.

Q. And will you state to the court what parts your wife, Agnes Anderson, and the two boys had in the farming operations on the old partnership through the years and when it occurred? [15]

A. My wife cooked for hired help, the boys helped with the work as soon as they were—I could say that they started work when they were 12 years old doing things that they were capable of doing.

Q. That would be in handling some of the farm machinery?

A. Driving truck, driving tractor.

Q. And did they have anything to do with the cattle? A. Helping move cattle, work cattle.

Q. Did that work continue every year from the time the boys were old enough to operate or to work during the entire life of the A. E. Anderson partnership? A. It did.

(Testimony of Noel Anderson.)

Q. Now were any wages paid the boys?

A. In the latter years of the old partnership they were paid some wages.

Q. And your wife, you say she cooked for men?

A. She did.

Q. Now those were men hired in the partnership operations?

A. That is right.

Q. And did she do any other work in the field in the old partnership?

A. She did.

Q. What did it consist of? [16]

A. I remember in '42 she assisted in the hay field, drove a pickup truck that is used to pull the stacker.

Q. What have you to say about the, what became of the profits from the partnership in the earlier years?

A. The profits were invested in land, new equipment, and, of course, living expenses.

Q. Was there an increase in the size of the operations during that period?

A. There was.

Q. In land cultivated?

A. That is right.

Q. What about the cattle part of the operation?

A. The cattle herd was increased.

Q. What sort of cattle do you grow?

A. We grow Aberdeen Angus cattle.

Q. And has that herd been rather noted through the years for its quality?

A. They are noted as a good commercial Angus herd.

Q. Much has been made of the Kingsbury place,

(Testimony of Noel Anderson.)

Mr. Anderson, did you have any interest in the Kingsbury place when it was purchased?

A. I didn't.

Q. But you did have a half interest in all of the other operations? A. I did.

Q. Is that right? A. Yes. [17]

Q. Now your father died you said in December of 1943; did you continue the operations as the surviving partner for a period after that?

A. I did.

Q. The method of farming perhaps you might tell the court about when you started your farming operations, for instance, for the '44 crop when would the farming operations be started?

A. The farming operations would be started in the spring of '43 for the '44 crop.

Q. And what happens in general in those operations?

A. The land is first plowed or deep turned in some manner and then it is cultivated and kept clean through the summer months.

Q. Now do you grow fall wheat, winter wheat?

A. Yes.

Q. How much of your operations are normally winter wheat?

A. Well, practically all except for a few acres of feed crops, oats or barley.

Q. And when would the crop be seeded for the '44 crop?

A. It would be seeded in September of '43.

Q. Then the crop was in the ground and grow-

(Testimony of Noel Anderson.)

ing, the '44 crop, at the time of your father's death?

A. It was. [18]

Q. So that you continued the old partnership so far as that crop was concerned through the year '44, is that correct? A. That is correct.

Q. Now was an administratrix appointed of your father's estate? A. There was.

Q. In the early part of '44? A. Yes.

Q. And who was that? A. My mother.

Q. And who was that? A. Aleta Anderson.

Q. And that estate was in the process of probate for some time? A. It was.

Q. How long?

A. The first decree was issued August 19th, 1946.

Q. And during that time the question of the federal estate tax was involved? A. It was.

Q. And you are familiar, are you, with all of the affairs in connection with the estate, are you?

A. Quite familiar.

Q. You knew of the filing of the federal estate tax return? A. Yes. [19]

Q. In fact you went over it with your mother and her attorney? A. That is right.

Q. Now was that return audited?

A. It was.

Q. And in that return you followed the inventory in the estate pretty well, did you? A. We did.

Q. Now when the inventory in the estate was filed you have already testified that all of the land was in your father's name? A. That is right.

Q. But you claimed $\frac{1}{2}$ of everything except the

(Testimony of Noel Anderson.)

Kingsbury place? A. I did.

Q. And the appraisal was made on that basis?

A. It was.

Q. And the federal return, federal estate tax return was made on that basis? A. It was.

Q. Did you know of the audit of the federal estate tax return? A. Yes.

Q. Was it accepted by the Government?

A. It was. [20]

Q. As turned in with the possible exception of an adjustment for a small error?

A. There was a small adjustment.

Q. But so far as the ownership of the property was concerned and the part that the A. E. Anderson estate owned and the part that you owned that was accepted by the Bureau of Internal Revenue?

A. It was.

Q. And it has never been questioned?

A. Never has.

Q. Now, Mr. Anderson, what did you do with reference to the money that was in the old partnership after your father's death, was there any change in the account?

A. That account became an estate account; it was in my father's name and it became an estate account.

Q. Now was there another account opened?

A. There was.

Q. When? A. I believe in January of '44.

Q. You were then operating as the old partnership? A. We were.

(Testimony of Noel Anderson.)

Q. And you didn't have any bank account?

A. No.

Q. And what did you do?

A. I opened an account in the name of A. E. Anderson and Son. [21]

Q. Where?

A. In the Chouteau County Bank, Fort Benton.

Q. Now what was the custom with reference to the sale of the wheat through the years, how did you handle that?

A. Well the wheat was sold and deposited to the partnership account.

Q. Was there any wheat ever held over from one year to another?

A. Yes, that has been common practice.

Q. Did you have large granary space on the farm? A. We did.

Q. And was the amount of wheat held over at various times quite a substantial amount?

A. It was.

Q. Now did you sell any of the old partnership wheat in the year '44? A. I did.

Q. Where was the money placed from that?

A. It was placed in this new account.

Q. And was there any start made in the business relations for change in ownership or change in operations during the year '44 so far as your accounts were concerned? A. No. [22]

Q. Directing your attention to the preparation for the '45 crop, who worked in the preparation of that crop?

(Testimony of Noel Anderson.)

A. We had a hired man at that time and our two sons worked on the ranch.

Q. And what have you to say as to the share of the farm work that compared to what you did that the boys did during the years say from '43 on, including '44?

A. When they were there they took my part of the heavy work.

Q. Was there any particular reason for that?

A. Well as I see it there had to be someone to look after these little details, management and I had come to realize that I would have to slow up; I had been advised by a physician to slow up.

Q. How long had the boys been working in the field and doing the farm work say up to the year '44?

A. Well as I have said before, they worked, started when they were 12 years old.

Q. Which was several years before that?

A. That is right.

Q. And had they become well versed in farming methods and handling farm machinery by that time?

A. They had. They were very diligent; they liked the work and they did the work. [23]

Q. Now what about the preparation of seed bed, the summer fallowing and seeding of the crop for '45 in '44; did the boys have a large part in that?

A. They did.

Q. Were they there all of that year '44?

(Testimony of Noel Anderson.)

A. Noel Jr. entered the Army I think it was September 19th, 1944.

Q. And was he there then any more in '44?

A. He was not.

Q. How long was he in the Army?

A. He was discharged from the Army in January of '46.

Q. He saw active service, did he?

A. He did.

Q. Was he in the hospital before he was discharged?

A. He was wounded on Okinawa in May of '45.

Q. Mr. Anderson, after your father's death during the year '44 or any time during near that period did you ever talk to the boys about taking them into the farming operations? A. In '44?

Q. Well ever mention anything of that kind to them or talk over what their future would be?

A. Nothing definite as far as the partnership was concerned until about Christmas time of '44. [24]

Q. Had any talk occurred between you at any time as to whether they might stay on the farm?

A. That had been discussed many times.

Q. And what was the result of that, what did they decide, if anything?

A. They were determined that they were going to be farmers.

Q. Now did you take any steps during the year '44 to form a new partnership? A. We did.

Q. Did you consult an attorney at that time?

(Testimony of Noel Anderson.)

Mr. Angland: Just a minute, your Honor. We have been rather patient and tolerant, I believe, but I think we are getting to the point where we would ask that counsel not lead and suggest to his witness to quite the extent that he has been leading and suggesting the answers to the witness up to this point. We are coming to some rather important evidence.

Mr. Lewis: If the court please, I realize that and when we are trying a case to the court I haven't been quite as careful as I might otherwise be.

The Court: Well can you lay your foundation here so we will get rapidly through it. We have accomplished something in point of time in not following the rules as closely as we should, [25] perhaps.

Q. Mr. Anderson, did you consult your attorney at any time during that year? A. I did.

Q. And who was it?

A. Mr. Lewis. Yourself.

Q. Your attorney now? A. Yes.

Q. What was the purpose of the consultation?

A. I was seeking advice as to the legal aspects of forming a new partnership.

The Court: I didn't get that first word, "forming a"?

Mr. Lewis: Forming a family partnership.

Q. And did we talk over more or less details or not? A. We did.

Q. Did you outline anything about what you had in mind with reference to the partnership?

Mr. Angland: Now, your Honor—just a minute,

(Testimony of Noel Anderson.)

Mr. Anderson. This is the point I called the court's attention to a moment ago. I note Mr. Lewis is still leading and suggesting the answers to his witness. I think at this point it is only fair they should be more restricted in the nature of the questions rather than having him lead the witness at this time. He is getting at what we might term the crux of the case; at least it has more force and effect, the evidence at this time. [26]

The Court: If you want to hurry along I suppose you can resort to the old-time question of whether or not, state whether or not.

Q. Will you state, Mr. Anderson, whether or not the question of somewhat what you had in mind was outlined by you to your attorney?

A. It was.

Q. And did you get into the question of who was to be in the partnership or not? A. We did.

Q. State whether or not you talked about what property was going into the partnership?

A. We did.

Q. And was there any paper worked out as to the shares at that time, if you recall?

A. We did some figuring or estimating on the property that would go into the new partnership.

Q. I hand you Plaintiff's proposed Exhibit No. 1 and ask you if you recognize that sheet of paper?

A. I do.

Q. Do you know in whose handwriting it is?

A. I believe it is in your handwriting.

Q. And was that paper drawn up, the notations

(Testimony of Noel Anderson.)

thereon at the time that you consulted with me?

A. They were.

Mr. Angland: May I inquire of Mr. Anderson?

Mr. Lewis: Sure. [27]

Q. (By Mr. Angland): Mr. Anderson, at the time that you are testifying concerning it is some date in '44, is that right?

A. You mean when we had this consultation?

Q. Yes.

A. It was in October, I believe, of '44.

Q. You think it was October of '44?

A. It was.

Q. Had you at that time settled with your mother and your sister for the purchase of their interests in the estate?

A. I had not. The agreement had been made but no settlement had been made.

Q. Did the paper Mr. Lewis has handed you and what has been identified as Plaintiff's Exhibit No. 1 have relation to the estate matters and the valuations that you might place on the entire property so that you might purchase your mother's interest and your sister's interest?

A. The valuations on this paper were taken from the inventory and appraisement of the estate.

Q. Of the A. E. Anderson estate?

A. A. E. Anderson estate.

Q. Then you were not including in this then the property that you owned as a partner in the A. E. Anderson estate? A. Yes. [28]

(Testimony of Noel Anderson.)

Q. But you were not including in it your property in the partnership of A. E. Anderson & Son.

A. Will you state that again, please.

Q. Well possibly I can make myself clearer, Mr. Anderson. That is what I want to do. You were a partner in the A. E. Anderson and Son partnership and you were also an heir to a one-third interest in the A. E. Anderson estate?

A. That is right.

Q. In arriving at these figures what I am getting at is were you at the time considering the purchase of your mother's interest and your sister's interest in arriving at the valuations here? Is that the proposition that you were working on when you were working out a valuation so that you might determine what you might pay your sister and what you might pay your mother for their interest in the estate property?

A. The property had already been appraised and this sheet was worked up.

Q. One-half of the property had been appraised, is that it? A. Yes.

Q. One-half of the A. E. Anderson & Son property had been appraised? A. Yes.

Q. Yes, that is what I am getting at, a one-half interest takes on a different value than the whole; you don't necessarily pay the same for a one-half interest; [29] it might not be a value equal to one-half of the whole, you know what I mean by that?

A. I understand what you are getting at.

Q. Your father's estate might not be appraised

(Testimony of Noel Anderson.)

at a full one-half of the whole value because it becomes an undivided one-half with you as the owner of one-half interest. Now I am trying to find out whether or not this actually had to do with the purchase of your mother's interest and your sister's interest in the estate, in the A. E. Anderson estate at the time you were talking with Mr. Lewis in '44?

A. The agreement had been made with my mother and sister and this sheet included all the property that was to be taken over by the new partnership and operated.

Q. This included all of it? A. All of it.

Q. It included the appraisal of your father's estate covering everything that it was contemplated you would take over when you would take over the whole thing? A. That is right.

Q. That is right. Now, what is there, Mr. Anderson, about this particular sheet that you recall as being a sheet or paper, Plaintiff's proposed Exhibit No. 1, as being the sheet or paper that was prepared when you were talking with Mr. Lewis about this matter in '44? Is there anything about the sheet of paper that reminds you that [30] it was prepared at that time or is it a fact that Mr. Lewis handed it to you as the sheet that he says was prepared then?

A. As I remember it is the sheet that was prepared at that time.

Q. And is there anything about it?

(Testimony of Noel Anderson.)

A. The figures, the valuations and the property, the things that were set down here.

Q. That is a memorandum that Mr. Lewis prepared while you were in his office talking to him?

A. That is right.

Q. And it appears to contain the same information that you and he discussed?

A. That is right.

Q. Is that what there is about it that you recall?

A. Yes.

Q. You don't know where it has been since that time?

A. I presume it has been in Mr. Lewis' office in his files with other papers.

Mr. Angland: Well we don't like to be technical about the matter, your Honor, but I think it is objectionable at this time; unless you have further identification we will object to the introduction of the exhibit.

The Court: You have been talking about a paper; what does it contain; what is it about? [31]

Mr. Lewis: I haven't offered it yet, your Honor, and am willing to go further.

The Court: Oh, you are going further?

Mr. Lewis: Now in view of the inquiry of Mr. Angland I think I should ask two or three questions before I offer it.

Q. (By Mr. Lewis): Now, Mr. Anderson, you have some items on the left on here? A. Yes.

Q. Now the first item, \$7,460.75, that is what?

A. I believe that would be the Kingsbury place.

(Testimony of Noel Anderson.)

Q. And that was entirely owned by your father as has already been testified to? A. It was.

Q. But it was included, of course, with the other property of the estate in the deal that you had arranged with your mother and sister?

A. That is right.

Q. Now the other real estate is the entire value of \$12,950 of the partnership real estate?

A. Yes.

Q. And would that be true of the farm machinery, the entire value? A. Yes.

Q. And also with the cattle? A. Yes. [32]

Q. And you have already stated, have you, that these amounts were arrived at from the inventory and appraisal filed in your father's estate?

A. That is correct.

Q. But, of course, these were charged and doubled in certain instances?

A. That is right.

Mr. Lewis: Now if the court please, we offer Plaintiff's proposed exhibit No. 1 in evidence.

Mr. Angland: To which the defendant objects, your honor; it does not appear to be a memorandum prepared by this witness and does not appear to have been in his handwriting, rather it is in the handwriting of his attorney according to his evidence, so there is no foundation to establish that he is a handwriting expert. There is no date on which the document was prepared; the time I believe was the 1st of October of '44. Apparently it is offered to prove the truth of the matter stated

(Testimony of Noel Anderson.)

therein. It seems to me that the person who prepared the memorandum should probably identify it and show what the circumstances were and when it was prepared and where it has been since then.

The Court: Well in view of all the proof that has been taken in respect to the proposed Exhibit 1 it may prove to be material and of some value as evidence. Of course, I can't anticipate everything that will be introduced at this time but I think I will allow it to be [33] introduced in evidence. I think it has been sufficiently identified as to place, time and circumstances and persons. It may be received in evidence. Proceed.

Q. (By Mr. Lewis): Now, Mr. Anderson, did you or did you not take further steps with reference to formation of a new partnership?

A. During the Christmas holidays of '45 or '44 our son, Robert, was home, and my wife and I and Robert discussed the formation of the new partnership.

Q. Was any agreement made at that time, verbal agreement? A. There was.

Q. Will you state to the court in substance what it was?

A. The agreement was that a $\frac{1}{6}$ working interest in the new partnership would be sold to each of the boys; they were to be charged with $\frac{1}{6}$ of the value of the property involved, and my wife was to be a partner with $\frac{1}{3}$ interest, and I was to be a partner with $\frac{1}{3}$ interest.

Q. Now did the three of you agree to that ar-

(Testimony of Noel Anderson.)

rangement at that time? A. We did.

Q. And what was the partnership formed for?

A. It was formed for the purpose of carrying on the operations of the ranch. [34]

Q. Did you or did you not arrive at a valuation of the property that was to be turned in to the partnership? A. We had.

Q. And was that the property, Mr. Anderson, listed on Plaintiff's Exhibit 1? A. It was.

Q. And the valuation, the figure of \$45,000 shown there, Mr. Anderson, was that the figure that you based as the value of the partnership when you started out? A. That is the figure.

Q. And $\frac{1}{6}$ th of that amount would be what?

A. \$7,500.00.

Q. And was that the amount that the boys were to pay for their share? A. That is right.

Q. Now the property that you were turning in to the partnership did Mrs. Anderson have any share in that? A. She did.

Q. What was her share? A. $\frac{1}{3}$ rd.

Q. Well, I mean before?

A. Before the partnership?

Q. Yes. A. $\frac{1}{2}$ interest.

Q. And you stated that you had made an agreement with your sister and your mother to purchase their interests in the A. E. Anderson property? [35]

A. That is right.

Q. Before this occurred?

A. That is right.

Q. Now who were the heirs of A. E. Anderson?

(Testimony of Noel Anderson.)

A. My mother, my sister and myself.

Q. You were the sole heirs? A. Yes.

Q. So you inherited a $\frac{1}{3}$ rd interest in the estate?

A. That is right.

Q. And your sister $\frac{1}{3}$ rd?

A. That is right.

Q. And your mother $\frac{1}{3}$ rd?

A. That is right.

Q. Now did you close the deal with your mother and sister at that time?

A. The deal was not closed at that time.

Q. Why wasn't it?

A. Because a lot of these things hanged on the settlement of my father's estate and the agreement was that they would share in the profits of the old partnership for '44.

Q. The matter of the estate tax was coming along and awaiting determination?

A. It was. [36]

Q. And other matters that kept the estate open until the time that you have already testified to as being in August of '46, is that correct?

A. That is right.

Q. Well by the spring of '46 state whether or not you had your affairs in shape to close the deal with your mother and sister, that is, pay them the money?

A. Things were shaping up so it appeared that the estate would soon be distributed.

Q. And did you pay your mother the agreed

(Testimony of Noel Anderson.)

price and secure a deed from her about that time?

A. I did.

Q. I hand you Plaintiff's proposed Exhibit 2 and ask you if you recognize it? A. I do.

Q. What is that?

A. That is a check I gave to my mother for her interest in the distributed interest in the estate.

Q. In the estate? A. Yes.

Q. With the exception of what?

A. Exception of cash.

Q. Now did you receive anything in return from your mother at that time?

A. I received a deed. [37]

Q. On what account was Plaintiff's proposed exhibit 2 drawn?

A. It was drawn on my wife's and my personal account, joint account.

Q. Joint account? A. Yes.

Q. Did your wife own an undivided half interest in the account at that time? A. She did.

Q. I hand you Plaintiff's proposed Exhibit No. 5 and ask you to examine it, and state what it is if you know?

A. It is a deed conveying my mother's distributive interest from my father's estate to me.

Mr. Lewis: We offer in evidence Plaintiff's proposed exhibit 2 and exhibit 5.

The Court: Exhibits 2 and 5.

Mr. Angland: No objection.

The Court: They may be admitted in evidence.

Mr. Lewis: At this time, if the court please, I

(Testimony of Noel Anderson.)

wonder if we might agree that where we are introducing original exhibits in the case that copies may be substituted afterwards?

Mr. Angland: Yes.

The Court: I think the other side is just as anxious to do that? [38]

Mr. Angland: Yes, we are, and either side—we would qualify that some that either side may withdraw the original for the purpose of making copies, photostatic or otherwise, so that the copies may be substituted for the original. In some instances it may become necessary to withdraw the exhibit to make a photostatic copy; is that agreeable?

Mr. Lewis: That is agreeable.

The Court: Very well.

Mr. Lewis: It so happens I have certified copies which may be substituted later.

Q. (By Mr. Lewis): Now, Mr. Anderson, I hand you Plaintiff's proposed Exhibit 3 and Plaintiff's proposed Exhibit 4 and ask you to examine them. Plaintiff's proposed Exhibit 3 is what?

A. Is a check to my sister, Mrs. Walter Finney.

Q. Is that the same person as Selma Finney?

A. That is right.

Q. On what bank or on what account was Plaintiff's Exhibit 3 drawn?

A. It was drawn on my wife's and my joint account.

Q. I hand you Plaintiff's proposed Exhibit No. 6 and ask you if you recognize it? A. I do.

(Testimony of Noel Anderson.)

Q. What is that, if you know?

A. It is a bank statement for the month of June for [39] the account of Noel or Agnes Anderson.

Q. And it is the original statement that you received from the bank? A. It is.

Q. I hand you now and I will ask you to examine Plaintiff's proposed Exhibit 4 and state what that is?

A. That is a check for \$5,000.00 to my sister, Mrs. Walter Finney.

Q. And on what account was that drawn?

A. On the account of Noel Anderson & Sons.

Q. Why were there two checks given?

A. At the time there wasn't sufficient money in our personal account to make these payments.

Q. And did that \$5,000.00 check there constitute a withdrawal by you and your wife from profits of the new partnership, Noel Anderson & Sons?

A. It did.

Q. The addition of the two checks, Mr. Anderson, what does that represent then?

A. It represents the amount I paid to my sister for her distributive interest in my father's estate.

Q. And did you receive anything in return for that? A. I did.

Q. I hand you Plaintiff's proposed Exhibit No. 7. Will you please examine it? Do you recognize it? A. I do. [40]

Q. What is it?

A. It is a deed conveying my sister's distributive interest in the estate of my father to me.

(Testimony of Noel Anderson.)

Q. Now was this deed and the other deed that has already been introduced in evidence a consummation of the agreement that was made in '44?

A. That is right.

Q. Between you and your mother and your sister? A. That is right.

Mr. Lewis: We offer in evidence Plaintiff's proposed Exhibits 3, 4, 6 and 7.

Mr. Angland: No objection to any of the exhibits.

The Court: They may be received in evidence.

Q. Mr. Anderson, Plaintiff's Exhibit 6, the bank statement, are the two checks, Plaintiff's Exhibit 2 to Aleta P. Anderson and Plaintiff's Exhibit 3 to Mrs. Walter Finney, charged against the account on that statement? A. They are.

Q. Calling your attention again to Plaintiff's Exhibit 4, Mr. Anderson, do you know whether or not that \$5,000.00 was charged on the books, on the partnership books of Noel Anderson and Son against you and your wife, Agnes Anderson?

A. It has been charged.

The Court: We will take a 5-minute recess.

(11:10 a.m.) [41]

Court resumed, pursuant to recess, at 11:25 a.m. at which time counsel were present.

NOEL ANDERSON

resumed the stand and testified as follows:

Direct Examination

(Continued)

By Mr. Lewis:

Q. Mr. Anderson, I hand you Plaintiff's proposed Exhibit No. 8 and ask you if you recognize it?

A. I do.

Q. Will you look at the signature and the seal on the other side? What is that instrument?

A. That is the Decree of Distribution in the estate of my father.

Q. And this is a certified copy of the original, is it? A. Yes.

Q. And this decree includes all of your father's interest in the partnership? A. That is right.

Q. In the A. E. Anderson & Son partnership?

A. That is right.

Q. It includes the entire interest in the Billy Kingsbury land? A. It does.

Q. And it includes somewhat other items that are not involved in the case?

A. That is right. [42]

Mr. Lewis: We offer in evidence Plaintiff's proposed Exhibit No. 8.

The Court: Any objection?

Mr. Angland: No, your Honor.

The Court: It may be received in evidence.

Q. Now, Mr. Anderson, getting back to the formation of the partnership of Noel Anderson &

(Testimony of Noel Anderson.)

Sons, was Noel Anderson, Junior, or Noel J. Anderson there at that time of the conference?

A. He was not.

Q. Where was he?

A. He was in Camp Hood, Texas.

Q. In the military service? A. He was.

Q. Did he come home on furlough after that?

A. He did.

Q. When?

A. It was sometime in the latter part of January.

Q. And was anything said to him by you during the time he was home about this partnership?

A. There was.

Q. And what was said or what was the substance of the matter?

A. He was informed of what we had done on the new partnership we had formed and of course he was included.

Q. Did he fully understand what was involved in it at the time? A. He did. [43]

Q. And what was his reaction to the proposal?

A. It was perfectly satisfactory with him; he wanted to come home and farm when he got out of the Army.

Q. Did he tell you then what he wanted to do about the partnership?

A. It was acceptable to him.

Q. Now, Mr. Anderson, how did you keep the accounts of the closing up of the old partnership

(Testimony of Noel Anderson.)

for '44, for instance, after your father died, and the accounts of the new partnership?

A. I kept a farm account book.

Q. And in that farm account book what was entered? I mean not the specific items but what did you enter in there in general?

A. The receipts and expenditures of the partnership.

Q. And are they all in that book?

A. They are.

Q. Now, Mr. Anderson, you I suppose made income tax returns every year? A. We did.

Q. And did you make federal income tax return for the year '44? A. We did.

Q. And how was that made?

A. It was made in the name of A. E. Anderson & Son. [44]

Q. And it was divided up, was it?

A. It was.

Q. And were there individual returns made, individual returns made from that partnership?

A. There were.

Q. And who, what were they?

A. My personal return, my wife's personal return, Noel J. Anderson's return.

Q. No, on what partnership?

A. The old partnership?

Q. Yes.

A. Noel Anderson and A. E. Anderson Estate.

Q. Now, was there an item of wheat that had

(Testimony of Noel Anderson.)

been carried over shown in the previous year belonging to the old partnership?

A. You are referring to what year now?

Q. Well that was a part of '44 but carried over into '45, is that correct? A. Yes.

Q. And during this period, Mr. Anderson, you had to keep track of the estate affairs and the old partnership? A. Yes.

Q. And the new partnership, did you?

A. Yes.

Q. Did you carry on separate cash accounts for each one? [45]

A. There was an A. E. Anderson & Son account and the partnership business was conducted through that account.

Q. And that was a bank account you refer to?

A. Yes.

Q. When was that account opened, Mr. Anderson? A. In January of '44, I believe.

Q. Now how long was it continued?

A. The A. E. Anderson and Son Account?

Q. Yes.

A. It was continued until May 1st, I believe, '46.

Q. And did you have any other business bank account during that period? A. No.

Q. Then so far as '44 is concerned then in general the entries and checks that were written on that account had to do with the A. E. Anderson & Son partnership, the final year of that partnership?

A. That is right.

Q. Now, then, when you came into '45 and you

(Testimony of Noel Anderson.)

formed a new partnership did you start business under the new partnership right away in '45?

A. As far as the operation of the ranch was concerned we did.

Q. And did you, did the new partnership take over the growing crop that had been seeded by the boys in '44? A. It did. [46]

Q. And that crop was harvested in '45, was it?

A. It was.

Q. Now during the year from September of '44 to the spring of '45 where was Robert Anderson?

A. He was at Montana State College.

Q. Attending school?

A. Attending school.

Q. Did he come back during, after the school year was over? A. He did.

Q. What happened?

A. He immediately went to work on the farm.

Q. And how long did that work continue?

A. He worked until he went back to college about the first of October.

Q. Then he had assisted, had he, in planting the '45 crop, preparing the ground and planting it in '44 with his brother, Noel J.? A. Yes.

Q. And he was there and took part in all of the farming operations during the year '45, up until the time he went to school? A. He was there.

Q. He worked? A. He did. [47]

Q. In the harvest and any other work in preparation of the ground, summer fallowing of the ground for '46? A. That is right.

(Testimony of Noel Anderson.)

Q. And did he return to school in the fall of '45? A. He did.

Q. Before he returned to school what about the crop?

A. The farm work was all done and the crop was seeded, harvesting was done, all the farm work was done.

Q. Did he return to the farm any time before the school year was out?

A. I remember in May of '45 he came home and we branded, helped us with the branding.

Q. Came home especially for that purpose?

A. He did.

Q. Had he ever helped with the branding before? A. Always.

Q. And Noel J. helped? A. Yes.

Q. Now there was no money on hand I take it in the partnership, the new partnership, Noel Anderson & Son? A. No.

Q. Because here hadn't been any sales, is that right? A. That is right.

Q. Now, did you sell any wheat in the early part of '45 that had been carried over from another year? A. I did. [48]

Q. Where did you enter that item?

A. I entered that item in this account book.

Q. What position has it with reference to the first income for '45? A. It is the first entry.

The Court: Are you introducing the page or the whole book?

Mr. Lewis: That is what we are discussing. We

(Testimony of Noel Anderson.)

will try to eliminate the matters not in issue and we will mark the pages referred to. The whole book will be Exhibit No. 9 and the pages will be 9(a), 9(b) and so forth.

The Court: All right.

Mr. Angland: I think that will be helpful to both the court and counsel.

Q. Now, Mr. Anderson, I hand you Plaintiff's proposed Exhibit No. 9 and direct your attention to page 2 which is identified as No. 9(a). What is on that page; not the items, but what is it?

A. It is a record of the income of the partnership for the year '45.

Q. Now getting back to the first entry, Mr. Anderson?

Mr. Angland: Which partnership?

A. The new partnership, Noel Anderson & Sons.

Q. Yes. And getting back to the first entry, what does that represent?

A. That represents the returns from the sale of $\frac{1}{2}$ of the wheat that was carried over [49] from '44.

Q. Which was what?

A. Which was wheat of the old partnership.

Q. And who owned that half interest in that wheat?

A. I owned $\frac{1}{2}$ interest and A. E. Anderson owned the other half.

Q. Did your wife share any in that?

A. Only that she was; the proceeds went to the joint bank account.

(Testimony of Noel Anderson.)

Q. Now, Mr. Anderson, how did you happen to enter that item from the wheat from the old partnership into the new partnership?

A. Well, I realize now that it shouldn't have been entered that way.

Q. Well, what was your purpose of entering if you have any?

A. It was income of the partnership.

Q. Well did you need any money in the new partnership?

A. Of course we needed money to operate on.

Q. Then it was entered there as a part of the partnership, the new partnership capital?

A. Yes.

Q. At the time it was? A. It was.

Q. In reality a gift on your part to the partnership as far as you were concerned?

Mr. Angland: Just a minute. [50]

Mr. Lewis: I will withdraw that.

Q. Did you make a return of this amount in the partnership of Noel Anderson federal income tax return for '45?

A. There was an amended return made in which this item was reported.

Q. In the first return was it reported as partnership funds in the original return filed?

A. It was.

Q. And what did you do when money came in from the earnings of the partnership in '45, where was it placed?

A. It was deposited in the A. E. Anderson & Son account.

(Testimony of Noel Anderson.)

Q. Did I understand that you used the A. E. Anderson & Son bank account during the year '45 for the Noel Anderson & Sons business?

A. That is correct.

Q. Well, why did you do that?

A. We were going through the transition period at that time; we were in the process of closing up the old partnership, establishing the new partnership and also in closing the estate.

Q. Have you had experience, special training in accounting? A. No, sir. [51]

Q. Was it a simpler way, was it or not, for you to handle it than to handle several accounts?

Mr. Angland: Just a minute. That is objected to, your Honor.

Mr. Lewis: All right.

The Court: Yes, leading and suggestive.

Q. Mr. Anderson, was this partnership account, I mean return, audited? A. For what year?

Q. For '45? A. It was.

Q. And the Bureau of Internal Revenue Agent made some suggestions as to changes?

A. He did.

Q. And what did you do about those changes?

A. An amended return was filed.

Q. Mr. Anderson, you filed an amended return?

A. Yes.

Q. And was this item that you have testified to with reference to that carry-over involved in the amended return and in the report of the agent?

(Testimony of Noel Anderson.)

A. Yes.

Q. And what was done with reference to that?

A. I paid him additional tax.

Q. I call your attention to Plaintiff's Exhibit No. 10 and to that part of it representing your [52] personal return was this item of carry-over wheat then by your agreement charged to your account as far as the tax for '45 was concerned? A. Yes.

Q. And was there another adjustment with reference to the sale of livestock? A. There was.

Q. And after those adjustments were made then according to your computation and the amended return was there an additional tax?

A. There was.

Q. And did you pay that tax, Mr. Anderson?

A. I did.

Q. And I hand you Plaintiff's proposed Exhibit No. 11 and ask you to examine it; do you know what that is?

A. That is a check to the Collector of Internal Revenue for \$3855.83 in payment of this additional tax.

Q. Primarily covering the item of the carry-over, the wheat? A. That is right.

Mr. Lewis: We offer in evidence Plaintiff's Exhibit No. 11.

The Court: Any objection?

Mr. Angland: We have no objection to that item. I would suggest, Mr. Lewis, I don't believe, possibly I missed it, I don't believe Mr. Anderson testified as to [53] the amount of the item of carry-over. If

(Testimony of Noel Anderson.)

you are tying the exhibit into the payment of the tax on that specific amount of carry-over, I thought it would make the record clear to show the amount of the carry-over.

Q. (By Mr. Lewis): The amount of carry-over, Mr. Anderson, was what, according to your return?

A. The amount of the carry-over, \$11,714.59.

Q. Which was added to your return?

A. Yes.

Q. But had been included in the partnership return, the original partnership return filed for that year?

A. That is correct.

Q. And was there another item there of the same type?

A. There was an A.C.A. payment amounting to \$352.00.

Q. And was that included in the original return of the partnership for that year?

A. It was.

Q. But it was a payment in connection with the old partnership?

A. That is right.

Q. Then there was one other adjustment, was there, with reference to livestock, which makes a little difference?

A. There was. [54]

Mr. Lewis: If the Court please, when Robert Anderson was going in the military service, I took his deposition; he has now been discharged so we will not need the deposition; it is sealed in the court file and I think there is a deed in there that we might want to use, and Mr. Angland agreed with me that it may be opened to see whether that deed is in there.

Mr. Angland: Yes, it is agreeable.

(Testimony of Noel Anderson.)

The Court: The deposition may be opened.

Mr. Lewis: Now, if the Court please, this deed was marked Plaintiff's Exhibit No. 2 and was attached to the deposition; I would like to have permission to take it from the deposition and have it returned to me. The deposition will not be used.

The Court: Very well, I suppose that is agreeable.

Mr. Angland: Yes, I see no objection to that; since the witness is present here to testify the deposition would only be admissible by way of impeachment at this time so it will probably serve no further purpose in the case.

Q. (By Mr. Lewis). Mr. Anderson, what did you do in your accounts during the year '45 in keeping accounts, what did you do with reference to the new partnership? You have already testified that you had all of the accounts in Plaintiff's proposed Exhibit No. 9, is that right? [55]

A. That is right.

Q. Did you have any other book that was used to keep track of the withdrawals of the various members of the partnership and the charges against the various members of the partnership?

A. I did.

The Court: Court will stand in recess until 2:00. (December 11, 1952).

(Court resumed, pursuant to recess, at 2:00 o'clock p.m. at which time counsel and parties were present.)

The Court: You may proceed.

(Testimony of Noel Anderson.)

Mr. Lewis: If it please the Court, we have three witnesses here who are very busy men and it would be a great accommodation to us if we could dispense at this stage with the further examination of Mr. Anderson and to allow these three witnesses to be put on the stand. I have talked with Mr. Angland and Mr. Bowen and they have no objection.

The Court: Very well, under those circumstances you may call your witnesses out of order.

Mr. Lewis: Call Maurice Farrell. [56]

MAURICE FARRELL

was called as witness for plaintiff, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lewis:

Q. Will you state your name?

A. Maurice Farrell.

Q. Where do you live, Mr. Farrell?

A. Fort Benton.

Q. How long have you resided there?

A. Oh, about 36 years.

Q. What is your occupation?

A. Manager of the Fay Adams Implement House.

Q. And how long have you been in that position?

A. Oh, since '44, roughly.

Q. And during that period during '44 were you familiar with the books of account and the charges of that concern?

A. Yes.

(Testimony of Maurice Farrell.)

Q. Do you know Noel Anderson? A. Yes.

Q. How long have you known him?

A. Oh, I have known him a good many years.

Q. Did you know his father, A. E. Anderson?

A. I did. [57]

Q. Did you have business relations with either the old partnership or the Noel Anderson & Sons partnership such as took you to the ranch of the Andersons? A. Yes.

Q. And do you recall any particular time when you were there?

A. Oh, I have been there on different occasions; the exact year I couldn't tell you that without looking it up.

Q. Do you know whether it was before or after A. E. Anderson died?

A. Well, I was there before and after, both.

Q. What were the occasions for your visiting the ranch?

A. Well, one occasion I remember of distinctly we had bought iron and I went out after it. We had bought it from A. E. Anderson.

Q. Are you acquainted with Noel Anderson, Jr., and Robert M. Anderson? A. I am.

Q. How long have you known them?

A. Practically ever since they were born.

Q. Did you see either or both of these boys at any time you were at the ranch?

A. Well, understand I stated—I know that Noel junior was there.

(Testimony of Maurice Farrell.)

Q. Do you know what he was doing; did you see what [58] he was doing?

A. No, I didn't see what he was doing at the time.

Q. Do you know whether or not he was engaged in any of the farm work?

A. Well I imagined he was because I saw his dad give him orders to go do something.

Q. Did you see them doing any work like hauling grain or field work?

A. Not that particular time.

Q. Did you at any other time?

A. Well I have seen them working in the fields when I drove by there.

Q. When?

A. Well I have seen Junior working in the fields since he came back from the service.

Q. Did you see any work being done in '44 by either of the boys?

A. I wouldn't be that specific as to year.

Q. You are not sure then as to about '45?

A. No.

Q. Mr. Farrell, have the Anderson family done business with your firm over all this period since '44? A. Yes.

Q. Mr. Farrell, who did you do business with usually when you were transacting business in the sale or in your regular course of business?

A. With the Andersons? [59]

Q. Yes.

A. Well whoever came in that particular day.

(Testimony of Maurice Farrell.)

Q. And who would it be?

A. Well it would either be Noel or Junior or——

Q. The boys or Noel Anderson?

A. Or Noel Anderson. Before that Mr. A. E. Anderson.

Q. Before that Mr. A. E. Anderson?

A. Yes.

Q. What is the nature of your business, Mr. Farrell? A. Farm implement business.

Q. And what were the supplies, the type of purchases that were made?

A. Oh some of them were complete units such as plows, others were repairs.

Q. How do you handle your book accounts when a purchase is made?

A. Well that is usually up to the customer if his credit is good.

Mr. Angland: What is that last answer?

A. That is usually up to the customer if his credit is good.

Q. Do you have different charge slips and cash slips?

A. Well charge slips and cash slips both come out of the same machine but the cash slips are marked for whatever the purchase is and then marked "paid" and the charge slips are marked "charge." [60]

Q. I hand you Plaintiff's proposed Exhibit 13 and ask you to examine that? You recognize what it is? A. Yes.

Q. What is it?

(Testimony of Maurice Farrell.)

A. It is a slip of Fay Adams Implement Company to Noel Anderson & Sons for one Fairbanks Morse engine for \$161.00.

Q. And can you tell from that slip whether it was a cash purchase or a charge?

A. This is a cash slip; it is marked "paid."

Q. I hand you Plaintiff's proposed Exhibit 14 and ask you to examine that? Is this the same sort of an exhibit, of a charge, same sort of a slip as Plaintiff's proposed Exhibit 13? A. Yes.

Q. Cash slip?

A. Yes, they are both cash slips.

The Court: Whose names?

Mr. Lewis: Noel Anderson & Sons.

The Court: Noel Anderson & Sons all of those slips show?

Mr. Lewis: The two slips are, if the Court please and the checks are signed by Noel Anderson & Sons; they were in '45, however.

Mr. Angland: Are you offering Plaintiff's Exhibits 13 and 14? [61]

Mr. Lewis: Yes.

Mr. Angland: To which we object, your Honor, to the offer of Plaintiff's proposed Exhibits 13 and 14 separately on the ground and for the reason that on the face of these exhibits they are shown to be transactions consummated with the concern in '46, both of them being marked 5/29/46. This case has to do with '45 and what was done by way of handling the business in '45 rather than in '46. They do

(Testimony of Maurice Farrell.)

not tend to prove or disprove the existence of the partnership for the tax year '45.

The Court: Have you got slips showing the same partnership name for '45?

Mr. Lewis: I do not, if the Court please.

The Court: What?

Mr. Lewis: We do not have any for '45, if the Court please. The purpose of the introduction of these slips and these proposed exhibits is to show the continuation of the partnership of A. E. Anderson & Son to illustrate further the intent.

The Court: A continuation from when?

Mr. Lewis: From January first, from the beginning of the partnership January first, '45, on through to '50.

Mr. Angland: Your Honor, that is the very question at issue, as to whether or not there was a partnership in '45. Mr. Lewis offers to prove the existence of a partnership during the taxable year '45 by offering evidence of transactions for the middle of '46. [62]

Mr. Lewis: That is right.

The Court: There must be an existing partnership under the law, of course, existing at the time in question, '45.

Mr. Lewis: That is correct. Now Mr. Anderson testified, as you will recall, that the partnership was formed at the beginning of January, '45, and continued on through; that the bank account of Noel Anderson & Sons was not opened until '46; therefore, we do not have slips showing the firm of

(Testimony of Maurice Farrell.)

Noel Anderson & Sons for '45 but that will be explained as the evidence is brought out.

Mr. Angland: I don't see how, your Honor, how the fact there isn't a bank account in the name of Noel Anderson & Sons in '45 tends to prove, that the exhibits showing the transactions in the middle of '46 tend to prove the existence of the partnership in '45.

The Court: Well he began, established the partnership and began with purchases or business transactions during '45 and then continued on; that would show a continuation and beginning of it. The question here, the vital question here is the existence of this family partnership in '45.

Mr. Angland: That is the vital question.

The Court: And if you began in '46 why that doesn't cover.

Mr. Angland: No, that doesn't.

Mr. Lewis: No, and there is no purpose by these exhibits to show it began in '46 and of course the purpose [63] is to show there was a continuation clear on through these other years.

The Court: Let's see what proof you have to make.

Mr. Angland: May I call the Court's attention to a case your Honor may have read, a decision by Judge Pope in the Harkness case; is your Honor familiar with that?

The Court: Yes.

Mr. Angland: That very question is passed upon in that case, and it would apply in this case; this

(Testimony of Maurice Farrell.)

evidence would not tend to prove the existence of the partnership in '45.

The Court: It is not according to Judge Pope's decision in that case; it is not according to the intent to enter into a partnership sometime in the future, a family partnership, but does one exist now, is it in existence?

Mr. Angland: That is the point; that is the reason for our objection.

The Court: I will sustain the objection until you bring some further proof of the existence of it in '45, then perhaps you can continue on and show a continuation of it, but you have to establish the present existence; except through the testimony of Mr. Anderson, of course, he tells us but if you are going to show its existence by evidence of this kind. [64]

Mr. Lewis: I think we will have to.

The Court: Take that up later.

Mr. Lewis: Take that up later if that is the case because we will have to go on with the proof through the Anderson family first, which I would have done normally.

The Court: All right, go ahead.

Mr. Lewis: That is all for now, Mr. Farrell.

MAURICE FARRELL

Cross-Examination

By Mr. Bowen:

Q. Mr. Farrell, you stated on direct there was

(Testimony of Maurice Farrell.)

a period during which your company operated with A. E. Anderson & Sons that you remember dealing with Mr. A. E. Anderson? A. Yes.

Q. Then there was a period when you dealt with Mr. Noel Anderson, the plaintiff in this case, and then a period when you said you were dealing with Noel Anderson & Sons, is that a correct statement?

A. Yes.

Q. That was your understanding?

A. Yes.

Q. So that there was a period according to your understanding of the operation between the partnership, which year you were not sure, of the A. E. Anderson & Sons and the partnership, year not sure, of Noel Anderson [65] & Sons, during which time the business was carried on by Noel Anderson, the plaintiff in this case?

A. The way I understood the operation of their business during this period between A. E. Anderson and Noel Anderson & Sons my understanding was through an estate and that is the way we dealt with them was as an estate and Noel Anderson did the business for the estate in our estimation.

Q. Mr. Farrell, you brought with you, did you not, at joint request of counsel in this case, your ledger accounts for the year '45?

A. That is right.

Q. Do you have those with you?

A. I think they are in the other office.

Q. To carry on while he is getting those ledger

(Testimony of Maurice Farrell.)

accounts, do you remember a conference had in your office between yourself and me and Mr. Henoland, internal revenue agent, Tuesday of this week discussing these business transactions herein concerned? You do remember our visit? A. Yes.

Q. Do you recall stating at that time, and I am just trying to refresh your recollection and I am not trying to put words in your mouth, that it was your understanding that for a period you dealt with A. E. Anderson, a partnership, and then Mr. Noel Anderson, the plaintiff herein, and then Noel Anderson & Sons, a partnership? [66]

A. If I made the statement we dealt with Noel Anderson in between the two partnerships——

Q. You had in mind the estate?

A. I had in mind the estate, yes.

Q. Will you turn, Mr. Farrell, to your ledger accounts for '45? To clarify what you record in these ledger accounts, Mr. Farrell, isn't it true that you note there the credit business that you do?

A. That is right.

Q. And the slips identified as Plaintiff's Exhibits 13 and 14 were records of cash business, is that correct? A. That is right.

Q. Have you examined your '45 ledger account to determine entries indicating business with the Anderson farm? A. Yes.

Q. Will you note for the record the first such entry?

Mr. Lewis: If the Court please, this is objected to as not proper cross-examination, and for the fur-

(Testimony of Maurice Farrell.)

ther reason that it is not the best evidence; the best evidence of the transactions are the slips themselves, the original entries, and we object to the use of the ledger without the use of the entries.

The Court: You keep this ledger, do you, yourself? [67]

A. No, it is kept by Mrs. Adams, the owner of the business.

The Court: Mrs. who?

A. Mrs. Adams, the owner of the business.

The Court: Well then it is not kept under your direction and observation?

A. No.

The Court: I will sustain the objection.

Mr. Bowen: Your Honor, to clarify his testimony.

Q. Isn't it true, Mr. Farrell, that you occasionally make entries in the ledger account?

A. I have in the past, yes.

Q. Then you periodically would have made ledger entries for the year '45, isn't that correct? In other words, didn't you tell me, Mr. Farrell, that you sort of worked with the books part time and Mrs. Adams worked with the books part time?

A. That is right.

Q. Is that your understanding?

A. It is under her supervision.

Q. Of course it is under her supervision because she is the manager of the business but as a matter of fact you did make entries in the book, did you not? A. Yes. [68]

(Testimony of Maurice Farrell.)

Q. And that is your original record, your original ledger account of the credit dealings with the Anderson farm in '45, is it not?

Mr. Lewis: To which we object on the ground that it shows on the face of it that it is not the original entry; it would have to be taken from some other book, and he described it as a ledger entry; it wouldn't be admissible.

The Court: Do you keep a daybook of your entries?

A. No, we don't. We use this.

Q. Do you make entries in that book, do you?

A. Occasionally, yes.

The Court: Well, if you have any entries to bring out that are material here during '45 that are made by this witness, I will allow you to bring out such testimony. I mean in reference to the Anderson transactions.

Q. (By Mr. Bowen): Can you refer to any entry in there in '45 with reference to business transacted with the Anderson family? And to refresh your recollection look at March 21, '45; was that entry made by you?

A. From the handwriting in the book I would say no.

Q. March 26, '45?

A. No, it was not my writing. [69]

Q. April 2nd, '45? A. No.

Q. May 18, '45? A. No, not my writing.

Q. August 21, '45? A. No.

(Testimony of Maurice Farrell.)

Q. Do you find any entries in '45 made by you recording dealings with the Anderson family?

A. None in this account. I don't see my writing any place.

Q. Turning then from the ledger accounts, Mr. Farrell, do you recall purchases made by farm help other than the immediate members of the Anderson family? In other words, you testified a while ago that purchases were usually made by, and you didn't state a definite period when made, you said they were often made by Mr. Anderson or his two sons, do you recall whether or not hired help came in and made purchases?

A. Well, to go back and say who bought anything, any one item just from memory I would say would be impossible, but the general procedure was whoever worked at the ranch would come in and get whatever they needed and that is the way we operated with them.

Q. Would it be proper, Mr. Farrell, for you to leave these ledger accounts here for the balance of the trial? A. Yes. [70]

Mr. Bowen: No further questions.

Mr. Lewis: No further questions at this time if the Court please, but we will want to recall the witness.

Mr. Angland: The Government will want to ask permission for this witness to leave; I imagine he will have to be up at Fort Benton if we issue a subpoena for Mrs. Adams. It appears she is a

(Testimony of Maurice Farrell.)

proper witness. Would it require your presence up there?

Mr. Farrell: Either she or myself would have to be there.

Mr. Angland: If we issue a subpoena for her, we would have to release this witness.

Mr. Lewis: We can't release this witness.

The Court: Bring Mrs. Adams up and leave him down there, and then send her back and bring this witness down.

Mr. Lewis: That is all for now.

NOEL ANDERSON

resumed the stand and testified as follows:

Direct Examination

(Continued)

By Mr. Lewis:

Q. Mr. Anderson, referring again to Plaintiff's Exhibit 9 and calling your attention to Plaintiff's Exhibit 9-a, will you please state whether that contains all of the income of the partnership of Noel Anderson [71] and Sons during the year '45?

A. It is.

Q. Then will you turn to Plaintiff's Exhibit 9-b and 9-c and 9-d and 9-e; will you please state what those pages in the book, those exhibits cover?

A. That is a record of the expenditures or expenses of the partnership.

Q. Noel Anderson & Sons partnership?

A. Yes.

(Testimony of Noel Anderson.)

Q. For '45? A. For '45.

Q. Now when you made up your federal income tax returns is this the book you refer to to get the information to make up your returns?

A. That is the book.

Q. And do the pages I have just referred to of 9-a, 9-b, 9-c, 9-d, 9-e, contain all of the record of receipts and expenditures of the partnership of Noel Anderson & Sons for '45 that was used in making up your partnership returns, federal income tax returns, partnership and individual for that year?

A. That is right.

Q. And Plaintiff's Exhibit 9-a is on page 2 of the book?

A. Yes, page 2 of the book.

Q. 9-b is on pages 27 and 28? A. Yes. [72]

Q. And 9-c is on pages 29 and 30?

A. Yes.

Q. And 9-d is on pages 31 and 32?

A. Yes.

Q. And 9-e is on pages 33 and 34?

A. Yes.

Mr. Lewis: We offer in evidence at this time Plaintiff's Exhibits 9-a, b, c, d, and e, contained in Plaintiff's Exhibit 9, which is the cash book.

The Court: What is it called?

Mr. Lewis: Cash book of Noel Anderson & Sons partnership account.

The Court: Any objection?

Mr. Bowen: No objection, your Honor.

The Court: Is there any place in the book where partnership is written out?

(Testimony of Noel Anderson.)

Mr. Lewis: I think there is not.

The Court: It may be received in evidence.

Q. (By Mr. Lewis): Mr. Anderson, I hand you Plaintiff's proposed Exhibit No. 12 and ask you to examine it? Do you know what this book is?

A. It is a ledger containing the accounts of the members of the partnership.

Q. Of Noel Anderson & Sons?

A. Of Noel Anderson & Sons. [73]

Q. Does it cover the year '45?

A. It does.

Q. From the beginning of the partnership on January 1st, '45? A. That's right.

Q. And does it carry on through continuously until the year '51? A. It does.

Q. Now, Mr. Anderson, directing your attention to Robert Anderson's account.

A. Page 1.

Q. Page 1 of the book. Will you state what that sheet on page 1 of Plaintiff's Exhibit 12 is?

A. That is an account, Robert Anderson's account of his withdrawals.

Q. In cash? A. In cash, yes.

Q. From what period to what period?

A. This is for the year '45.

Q. And are there other withdrawals in the book of Robert Anderson for each of the years for his cash withdrawals? A. That is right.

Q. Was there any withdrawal in cash by Noel J. Anderson during the year '45?

(Testimony of Noel Anderson.)

A. During the year '45 Noel J. Anderson was in the Army. [74]

Q. All the time? A. All the time.

Q. So there is no account of cash withdrawals during that year? A. That is right.

Q. Does the book contain other years showing the cash withdrawals of Noel J. Anderson?

A. It does.

Q. As part of his earnings in the partnership of Noel Anderson & Sons?

A. That is right.

Q. And will you please state what page and the year that they appear on?

A. On page 3 there is an account for '46 showing his cash withdrawals.

Q. And the next one for Noel J. Anderson?

Mr. Bowen; Your Honor, the earliest account apparently is, or rather the earliest withdrawal in the name of Noel was in the year '46; here again bearing upon a subsequent year to the year in issue; hardly relevant for the reasons proffered earlier.

Mr. Lewis: If your Honor please, in this same book is another account, which includes both charges against Noel Anderson in '45 and his withdrawals, if any, and that is true of all members of the partnership and I am getting to that. [75]

The Court: As I understand here is your book of account that begins in '45 and that goes on continuously to '51?

Mr. Lewis: That is correct.

(Testimony of Noel Anderson.)

The Court: And as I understand this account has not been admitted in evidence?

Mr. Lewis: No, not yet, if the court please; not this one. I am identifying what it is.

The Court: Well it seems to me with a foundation of that kind showing the beginning of the partnership of the books and accounts giving the details, the dates, the exact date of the beginning of the partnership and going on continuously would have some bearing on the issues here. You have got a pretty fine proposition to separate and segregate and say that having once established the beginning of a partnership you can't show a continuation of it if it is material. Now in the Pope decision they didn't establish a family partnership at all but they showed an intent of creating one in the future. That is my recollection of Judge Pope's decision, that is the gist of it, but now here they have practically been establishing the beginning of that partnership; now have we got any right to cut it off in '46 if it has any bearing upon the question of good faith and the intention really to create this partnership; can we say that it ended in '45? [76]

Mr. Bowen: I agree, your Honor, and suggest that this matter speaks for itself and the year '46 might be relevant as would the year '52, but rather than take up the court's time with all of these subsequent periods.

The Court: Here is a book and if it is introduced in evidence it speaks for itself.

Mr. Lewis: That is very true.

(Testimony of Noel Anderson.)

The Court: Go ahead and get a move on. Let's move a little faster or we won't get through for a week the way we are going now.

Q. (By Mr. Lewis): Will you please refer to the account of Noel J. Anderson, page 60?

A. Yes.

Q. What does that account show, not the items, but what does it cover?

A. It is a record of Noel J. Anderson's credits and withdrawals.

Q. Does it include the original charge against him for his share in the partnership?

A. It does.

Q. And carries on down through to the payment of the income tax for '50 and the early part of '51?

A. That is right.

Q. Now the items of earnings that are credited to him there, how were they arrived at? [77]

A. They were taken from the partnership income returns.

Q. Tax returns each year?

A. That is right.

Q. And that is the way you kept track of the credits? A. That is his net earnings.

Q. Are there any charges that should be made against any member of the partnership that do not appear on page 12, anything that you have bought that, in the course of the business, for instance?

A. The boys are not charged with their interest in new equipment purchased.

Q. But what is the situation as to their liability?

(Testimony of Noel Anderson.)

A. They own 1/6th interest in that new equipment.

Q. And if the partnership were to be closed up at any time that share would have to be charged against them in addition to these charges?

A. It would.

Q. Now is that true of page 58 for Noel and Agnes Anderson?

A. We have not been charged yet.

Q. But does 58 contain the entire withdrawals except for the share in the machinery that had been purchased of Noel and Agnes Anderson up to the beginning of '51 and including the payment of the '50 income tax? A. That is right. [78]

Q. And likewise does it include all of the credits for Noel's and Agnes' share in the earnings?

A. Up to and including the year '50.

Q. Now turn to page 62, the account of Robert M. Anderson, does that contain all of the withdrawals of Robert M. Anderson since January 1st, 1945, from the Noel Anderson & Sons partnership?

A. It does.

Q. And does it include the original charge of \$7500 for his share? A. It does.

Q. And does it include all of the credits for partnership earnings of that period?

A. Up to including the year '50.

Q. And it also includes the charge for the payment of his income tax for '50?

A. That is right.

(Testimony of Noel Anderson.)

Q. Now, Mr. Anderson, who made that book and who entered the entries in it?

A. It is my work.

Q. And is that the way you keep track of the position of the various partners with reference to how much they have drawn and how much credits they have in the partnership?

A. It is my record as I have kept it. [79]

Q. And that is complete for the entire period from January 1st, '45, to January 1st, '51?

A. To the best of my knowledge it is.

Mr. Bowen: One question, your Honor.

Q. (By Mr. Bowen): Was this book kept currently with the events which it allegedly records? In other words, were the entries for the year '45 made in '45 or were they made at a subsequent period?

A. There are entries for '45 possibly were made in the early part of '46.

Q. In other words, you are stating that you had this book prior to the spring of '47?

A. I did.

Mr. Lewis: We offer in evidence Plaintiff's Exhibit 12.

The Court: Is that the one you have just been questioning the witness concerning?

Mr. Lewis: That is the one.

The Court: Well how about it, any objections to Plaintiff's Exhibit 12?

Mr. Bowen: No objection.

The Court: It may be received in evidence.

(Testimony of Noel Anderson.)

Q. (By Mr. Lewis): Mr. Anderson, have you figured up how the accounts with the two boys stand now with reference to their earnings and their withdrawals, including the charge for the [80] partnership share?

A. I have up to and including the year of '50.

Q. And do you know what that is or do you have to refer to your books?

A. I can't give you the exact figures, no.

Q. By referring to your memorandum could you? A. Yes.

Q. Is this sheet of paper a memorandum made by you from the record? A. It is.

Q. Now, Mr. Anderson, what is the situation with reference to Noel J. Anderson, including the charge of \$7500.00 for his share?

A. The account of Noel J. Anderson shows total charges of \$32,187.72, credits of \$39,464.03, which does not include a charge for his interest in new equipment purchased.

Q. Now that is not on the books, is it because of the fact you make your income tax returns?

A. Well I don't know of any reason why it isn't there, but it isn't there.

Q. I mean in making the income tax returns your machinery is all put in on a depreciation schedule, is it not? A. That is right. [81]

Q. So the net earnings as shown by the income tax return would not include charges for new machinery, would it? A. That is right.

Mr. Angland: Just a minute. I am going to ob-

(Testimony of Noel Anderson.)

ject to counsel leading and suggesting to that extent again, your Honor.

The Court: Well he has forgotten the whether or no question.

Mr. Angland: That was quite an explanation of the answer to be given in that last one.

Q. (By Mr. Lewis): Mr. Anderson, will you state whether or not the charges for the new machinery that you buy from time to time in the partnership are charged off as expense in the income tax return.

A. They are entered on the depreciation schedule and depreciated.

Q. But they are actually paid for as they are bought, are they? A. Yes.

Q. And how are they paid for?

A. Paid for in cash from the partnership account.

Q. Taking that into consideration then, Mr. Anderson, approximately what is the situation with reference to Noel J. Anderson's account on January 1st, 1951. [82]

A. Adding his share in the new equipment to his total withdrawals would leave him a credit of a little less than \$2,000.00, I believe.

Q. And that remains where; where is the money if there is any money to take care of it?

A. In the partnership account.

Q. Referring to Robert M. Anderson's account what is the situation with reference to that?

A. Robert Anderson's account shows total

(Testimony of Noel Anderson.)

charges of \$34,858.18, total credits of \$39,464.03, and these charges do not include the \$5,362.09 for his interest in the new equipment.

Q. If you take that into consideration, what is the condition of his account approximately on January 1st, 1951?

A. His withdrawals would exceed his credits by roughly four or five hundred dollars.

Q. Then he has withdrawn his share of the profits during this period, is that right?

A. He has.

Q. And the indebtedness he owed in the beginning has been paid? A. It has.

Q. That indebtedness, when was that indebtedness paid with reference to '45?

Mr. Angland: What indebtedness are you talking about now, the new equipment? [83]

Mr. Lewis: The original indebtedness of \$7500.

A. I believe that was paid at the end of '50.

Q. About the end of '50?

A. About the end of '50.

Q. Was that true of both boys?

A. Generally speaking, yes.

Q. Now did Noel Anderson and Agnes Anderson withdraw their profits from the partnership account from time to time since January first, '45?

A. We did.

Q. As shown by the ledger account?

A. That is right.

Q. And state whether or not there has been a

(Testimony of Noel Anderson.)

continuous bank account of Noel Anderson & Sons since April 30th, '46, in the Chouteau County bank?

A. There has been.

Q. And still is? A. Still is.

Q. Now do you know whether or not at all times during that period there have been funds on hand with which to pay the shares due, share of earnings due the various members of the partnership?

A. I am quite sure there have been sufficient funds at all times.

Q. Do you know anything about the condition of the account at the present time? [84]

Mr. Angland: Well, what difference does it make? I will object to that as unduly prolonging the examination of this witness; what difference does it make?

Mr. Lewis: To show intent. I am showing the partnership is continuing concern up to the present time.

The Court: All right, go ahead.

Mr. Lewis: I didn't get the court's ruling.

The Court: Did you make an objection?

Mr. Angland: I object to it as being irrelevant. I said I don't see what difference it makes what the status of the account is in 1952, whether it is a profitable enterprise or unprofitable enterprise. We are interested in determining whether or not there was a partnership existing in fact in '45.

The Court: The only materiality I would see would be as to the continuance, if they satisfactorily establish the beginning as of January 1st, 1945.

(Testimony of Noel Anderson.)

otherwise then there is a question of materiality as to anything beyond that, beyond the year '45. The real question is have you and can you establish this partnership as of '45?

Mr. Lewis: That is true.

The Court: That is the law.

Mr. Lewis: That is the law and whether they bonafidely intended to enter into a partnership in that period. [85]

The Court: It is irrelevant until you satisfactorily establish that if you can.

Q. (By Mr. Lewis): I hand you Plaintiffs' proposed Exhibit No. 22 and ask you to examine it. Let me hand you 21 first; do you recognize this?

A. I do.

Q. What is it?

A. It is a deed from me to my wife conveying one-third interest in the real estate involved in this partnership.

Q. In the partnership of Noel Anderson & Sons?

A. That is right.

Q. I ask you to examine proposed Exhibit No. 22. Can you state what that is?

A. That is a deed signed by my wife and myself conveying a one-sixth interest in this real estate to Noel J. Anderson.

Q. And the real estate that is involved in the partnership of Noel Anderson & Sons?

A. That is right.

Q. I will ask you to examine Plaintiffs' proposed Exhibit No. 23 and state what it is?

(Testimony of Noel Anderson.)

A. It is a deed signed by my wife and myself conveying an undivided one-sixth interest in the real estate involved in this partnership to Robert M. Anderson. [86]

Q. Mr. Anderson, who held the legal title to this property after the deeds from your sister and your mother, which are already in evidence here and the decree of distribution in the A. E. Anderson estate which is in evidence here, from that time on up to the execution of Plaintiff's proposed Exhibits 21, 22, and 23?

A. The real estate was in my name.

Q. These carry the same date, do they not?

A. That is right.

Q. And what date is that?

A. 15th day of May, 1951.

Q. Now why, if you have any reason, was the period so long between the time that you acquired the full title to the real estate in question to the execution of this deed; why was that period?

Mr. Angland: We will object to that, your Honor; an explanation is not called for. The record as now made shows the title was acquired by this witness from the estate and from his mother and sister in the year '46, and the deeds weren't executed until '51. Why that was done, to explain something that would relate back and show the existence of the partnership in the year '45 is almost inconceivable, and I can't believe that any answer this witness might make would tend to prove or disprove any issue in the case. [87]

(Testimony of Noel Anderson.)

The Court: Well I will let him give his reasons; it may be of no consequence or materiality but we will see. I don't know what he is going to say. Well what was the reason if you had any?

A. The deeds were not given to the boys because they had not earned their shares in the real estate.

The Court: You mean they hadn't paid for their interest?

A. They had not earned their interest.

Q. (By Mr. Lewis): Or paid for it?

A. That is correct.

Q. And was there any particular reason why the deed hadn't been executed to your wife before that?

A. No particular reason; that would come in time. I saw no reason for haste.

Q. And during this period of time was this property in fact the property of the partnership of Noel Anderson & Sons?

Mr. Angland: Just a minute. Now, your Honor, we will object to that; the record now made speaks for itself.

The Court: He has already testified this forenoon; I think he told about where the legal title stood. It is just a repetition of really what was gone into this morning. [88]

Mr. Lewis: We offer in evidence Plaintiff's proposed Exhibits 21, 22 and 23.

Mr. Angland: We will object to the offer of these, to the introduction of these proposed exhibits 21, 22, and 23, for the reason that they on

(Testimony of Noel Anderson.)

their face show that certain property, certain real estate was deeded to the individuals named in the exhibits in the year '51, and that evidence does not tend to prove the existence of a partnership between the persons named during the year '45, the year in question in this case.

The Court: Well he gave an explanation why these interests weren't deeded before and they were deeded then; I will let them go in for whatever they are worth.

Q. (By Mr. Lewis): I hand you again, Mr. Anderson, Plaintiff's proposed Exhibit No. 10. This is what you testified to this morning. That is the amended federal income tax return for '45?

A. Yes.

Q. Now does that show, Mr. Anderson, the complete receipts and expenditures of the firm of Noel Anderson and Sons during that period with the exception of the new machinery which may have been purchased?

A. Yes, it does. [89]

Q. State whether or not that return was made in the regular course of business of the firm of Noel Anderson & Sons showing their first year's operation?

A. That is correct.

Mr. Lewis: Now if the court please, this is a copy and the counsel for the Government has the original return; it needs completion as to signature only and we have agreed that that may be completed, and I now offer it in evidence after the completion.

The Court: Any objection?

(Testimony of Noel Anderson.)

Mr. Lewis: We offer it now with the understanding it is to be completed, Plaintiff's proposed Exhibit 10.

The Court: Very well, any objection?

Mr. Angland: No objection.

The Court: It may be received in evidence.

The Court: We will have to take a recess (3:10 p.m.)

(Court resumed, pursuant to recess, at 3:30 o'clock p.m., at which time counsel and parties were present.)

The Court: Proceed.

NOEL ANDERSON

resumed the stand and testified as follows

Direct Examination

(Continued)

By Mr. Lewis: [90]

Q. Mr. Anderson, I hand you Plaintiff's proposed Exhibit No. 24, and ask you if you recognize what that is?

A. That is a partnership return of income for the year '45, Noel Anderson & Sons partnership.

Q. And does it include the individual returns of the various partners? A. Yes, it does.

Q. That is a copy, is it, of the original return you filed for '45? A. That is right.

Mr. Angland: Mr. Lewis, we can save your time and possibly the witness' and court's time, and we

(Testimony of Noel Anderson.)

will agree to submit photostatic copies of the original return submitted for '45 by the partnership, by Noel Anderson, by Robert Anderson and Noel Anderson, Jr., and Agnes Anderson.

Mr. Lewis: The original and the amended return for '45.

Mr. Angland: If that is agreeable to you we will have photostatic copies made.

Mr. Lewis: They will have to be marked. The amended return is marked and now I am offering Plaintiff's proposed Exhibit No. 24 with that understanding.

The Court: Very well, it may be received in evidence. [91]

Mr. Angland: That is offered as one exhibit?

Mr. Lewis: Exhibit 24 will be a complete return showing the partnership return and each of the individual returns.

Mr. Angland: I am wondering if to be certain wouldn't it be a good idea to have the Clerk identify them.

Mr. Lewis: Then each sheet should be marked in both of the exhibits.

Mr. Angland: I was going to say if you mark the partnership return for '45 and then the amended return for '45 as 24-a.

Mr. Lewis: They are both marked.

Mr. Angland: Oh, you have already got them marked?

Mr. Lewis: Yes.

Mr. Angland: Well we will let it go in that

(Testimony of Noel Anderson.)

fashion and we will substitute photostatic copies of these if agreeable to you.

Mr. Lewis: Yes.

Q. (By Mr. Lewis): Mr. Anderson, when did you first have any intimation after you filed the original return, partnership return for '45, that there was any question to be raised by the Bureau of Internal Revenue?

A. It was in March of '47. [92]

Q. Now up to that time did you have any idea at all that the partnership would be questioned?

A. Not that I can remember.

Q. And when did you open the bank account in the name of Noel Anderson & Sons?

A. It was on May 1st of '46.

Q. Now for '45 where were you keeping the funds of the A. E. Anderson partnership which you were closing up that year as you have previously testified to, the estate funds that you had and the funds of the Noel Anderson & Sons partnership?

Mr. Angland: That is objected to, your Honor, as not being an accurate statement of the facts as stated by the witness. The A. E. Anderson estate was not distributed until '46, in August of '46, nor were the deeds given to this witness by his sister and his mother until May of '46, so that there wasn't a situation where the affairs of the A. E. Anderson estate had been closed in '45; that isn't the situation at all as I understand the evidence.

The Court: He was the administrator?

(Testimony of Noel Anderson.)

Mr. Angland: No, he wasn't; his mother was the administratrix.

Mr. Lewis: If the court please, he was the surviving partner of the A. E. Anderson partnership and the matter of some of the estate funds were mixed up with some estate funds of the A. E. Anderson estate which were being closed up in '44 and '45. [93]

The Court: All right, I will let him answer the question.

(Question read.)

Q. Now for '45 where were you keeping the funds of the A. E. Anderson partnership which you were closing up that year as you have previously testified to, the estate funds that you had and the funds of the Noel Anderson & Sons partnership?

A. They were all in the A. E. Anderson & Son account.

Q. And when was that account opened, when and where was it opened?

A. It was opened in January of '44, Chouteau County Bank, Fort Benton.

Q. State whether or not you used that account during the year '45 as a depository for the funds of Noel Anderson & Sons partnership?

A. I did.

Q. And when did you cease to use that account as a depository for the Noel Anderson & Sons partnership?

A. When the account was closed April 30th or May 1st, '46.

(Testimony of Noel Anderson.)

Q. And when that account was closed, what was done with the funds that were left in the account at that time?

A. They were transferred to the account of Noel Anderson & Sons. [94]

Q. Now state whether or not there has been a continuous account of Noel Anderson & Sons in the Chouteau County Bank from the date it was opened on April 1st or May 1st, '46, to the present time?

A. There has been a continuous account.

Q. Now when the audit was being made by the Bureau of Internal Revenue of this '45 income tax return some time elapsed since the opening of the Noel Anderson & Sons account?

A. It had.

Q. In other words, it was from the 1st of May or thereabouts to some time in the spring of '47?

A. That is right.

Q. And in whose name were you transacting business for the partnership during that period?

A. In the name of Noel Anderson & Sons.

Q. Did you make your purchases in that name?

Mr. Angland: Just a minute. The evidence of the purchases is the best evidence so that we object that his statement is not the best evidence.

Mr. Lewis: It might have been cash purchases.

The Court: Well you can inquire whether or not the purchases were made in that name, that partnership name, and you can then supplement it by

(Testimony of Noel Anderson.)

specific instances if he wants to. Answer the question.

A. The purchases were made in the name of Noel Anderson & Sons. [95]

Q. And how were they paid?

A. They were paid from the account of Noel Anderson & Sons.

The Court: You are speaking now of May, 1946?

Mr. Lewis: From May, 1946, on.

Q. Will you state whether or not you sold any of the wheat grown by the partnership Noel Anderson & Sons during the year '45, no matter when it was sold, whether you sold that in the name of Noel Anderson & Sons?

A. I don't believe it was in the year '45.

Q. Was it in '46? A. It was.

Q. And was that part of the crop of '45?

A. It was.

Q. And part of the crop raised by the partnership Noel Anderson & Sons in '45?

A. That is correct.

Q. I hand you Plaintiff's proposed Exhibits 25 and 26 and ask you to identify them, please.

A. These are contracts of sale of bonus wheat that was hauled to the Greeley Elevator at Loma, Montana.

Q. And what wheat was it, where was it raised?

A. It was raised on the ranch.

Q. By whom?

A. By the Noel Anderson & Sons partnership in the year '45. [96]

(Testimony of Noel Anderson.)

Q. Raised in '45? A. Yes.

Q. Now will you tell the court what you meant by the term bonus wheat?

A. If I remember correctly, there was a big demand for wheat for export and the Commodity Credit Corporation offered a bonus to farmers who would haul their wheat in at that time and deliver it.

Q. And did you have the wheat represented by these Exhibits 25 and 26 in storage on the Noel Anderson & Sons ranch at that time?

A. That is correct.

Q. And as a result of that did you enter into a contract, did the partnership of Noel Anderson & Sons enter into a contract with the Government with reference to the sale of that wheat at that bonus?

A. That is right.

Q. Will you examine the Exhibits 25 and 26 and tell me whose signature appears thereon?

A. They are signed Noel Anderson & Sons by Noel Anderson.

Q. Is that your signature?

A. It is my signature.

Mr. Angland: We can't tell when delivery is made offhand. I noticed the agreement to sell. You are offering these at this time? [97]

Mr. Lewis: Yes.

Mr. Angland: May we make an inquiry?

Q. (By Mr. Angland): Was this wheat, as is evidenced by Plaintiff's Exhibits 25 and 26, wheat

(Testimony of Noel Anderson.)

that you had stored in the Greeley Elevator, is that the situation?

A. It was stored on the ranch and in May of '46 hauled to town.

Q. It was hauled to town in May of '46?

A. Yes.

Q. Apparently it was hauled in on May 15th of '46 and stored in the Greeley Elevator, at that time, is that right? A. That is right.

Q. And then on May 17th, no, May 23rd, '46, you entered into the agreement, is that it?

A. That is correct.

Q. Do you know whose name the wheat was stored in at the Greeley Elevator between May 15th, '46, and the time that you entered into these agreements?

A. I am quite sure it was stored in the name of Noel Anderson & Sons.

Q. You are not certain then?

A. I can think of no reason why it should be otherwise. [98]

Q. Well, looking at a summary that has been furnished by the Greeley Elevator Company it does not reflect that situation; it reflects the wheat as being Commodity Credit Corporation for Noel Anderson, now is it wheat that you had obtained a loan on from the Commodity Credit Corporation?

A. No.

Q. Well you understand why an entry of that kind would be made as of the 17th of May, 1946, showing Commodity Credit Corporation for Noel

(Testimony of Noel Anderson.)

Anderson by the Greeley Elevator, can you explain that to us as it might relate to these exhibits?

A. Quite frequently when we haul wheat to the elevators or transact other business the elevator man or whoever it may be has to be reminded of the fact that this is Noel Anderson & Sons wheat.

Q. What I am trying to get at, Mr. Anderson, is how the entry happened to be, if it is a fact when we reach that point, that the Greeley Elevator, Commodity Credit Corporation for Noel Anderson, as that may relate to these contracts dated within a week later?

A. I cannot explain what they do; all I know is what I do in signing these contracts. [99]

Q. The import of it—I am not trying to be unfair with you—the import of it is this; as we have our record the first time I have this wheat was a transaction in the name of Noel Anderson & Sons; it is the first and earliest date we have, and, of course, you have already testified concerning '45 wheat, so that we are interested in whether the elevator man was notified on the first occasion it wouldn't be a mistake on his part to have the wrong name; on the first occasion he would first have to be advised of the partnership. So that you will understand what we are asking you about, we are trying to get the connection between this entry of Commodity Credit Corporation for Noel Anderson on the 17th of May, '46, and the sale contract between Noel Anderson & Sons by you on the 23rd day of May, 1946, with Commodity Credit Corporation.

(Testimony of Noel Anderson.)

This is a contract with the Commodity Credit Corporation.

Mr. Bowen: If the Court please, on the reverse side of it appears to be terms and conditions for dealing with the Commodity Credit Corporation, and under paragraph three, plan 1, it reads: "Commodity agrees to pay the purchase price of the wheat in accordance with whichever one of the following plans is designated on the reverse side hereof in the space provided therefor: [100] The Bonus and the market price shall be paid as soon as practicable after the date elected for determining the market price." Now referring to the front side I see you elected the date 12/30/46, "as the date of which the market price of the above-described wheat shall be determined." So it would seem to follow from the terms and conditions here that sale or at least payment would not be made until as soon as it is practicable after the date elected for determining market price; necessarily that would be some time in '47, is that correct?

A. I believe the payment was received sometime in '47.

Q. In '47? A. It was.

Q. So that according to this the first payment on wheat in the name of Noel Anderson & Son from all that has been established so far was made in '47, is that right?

Mr. Lewis: That is objected to; if the Court please, I consented to inquiry here but we should

(Testimony of Noel Anderson.)

not go on into the case. That is getting clear away from the proposition.

Mr. Angland: That is correct.

Mr. Lewis: We offer in evidence, if the Court please, plaintiff's proposed Exhibits 25 and 26. [101]

The Court: What do you call them? What are they?

The Witness: Contracts on sale of wheat.

Mr. Lewis: With the local Production and Marketing Administration office as representatives of the Commodity Credit Corporation.

The Witness: That is correct.

The Court: Is there any objection?

Mr. Angland: I don't believe so, your Honor. They do not show the existence of a partnership in '45.

The Court: Except that his testimony would connect up on account of the wheat being raised then. I think they should be admitted for whatever value may be placed upon them later on as evidence.

Q. (By Mr. Lewis): Mr. Anderson, as a result of that audit by the Bureau of Internal Revenue in '47 a deficit tax was levied against you; the partnership for tax purposes was disallowed, is that correct? A. That is right.

Q. And a deficit tax levied against you which is the subject of this suit?

A. That is right. [102]

Q. I hand you Plaintiff's proposed Exhibit 27 and ask you to examine it; what is it, please?

A. This is a check to the Collector of Internal

(Testimony of Noel Anderson.)

Revenue, dated November 10th, 1949, for the sum of \$10,292.84, which was the deficiency assessment against me.

Q. At that time had you protested that assessment, deficiency assessment? A. I have.

Q. Have you been carrying the protest through in the adjustment and by this suit since that time?

A. I have.

Mr. Angland: I believe that is admitted in the pleadings, the deficiency. I have no objection.

Mr. Lewis: Then we offer in evidence Plaintiff's proposed Exhibit 27.

The Court: Very well. You have no objection. It may be received in evidence.

Q. (By Mr. Lewis): Of course, the check was drawn on the firm of Noel Anderson & Sons?

A. That is right. [103]

Q. And no definite disposition to whom it can be charged to can occur until this matter is settled?

A. That is correct.

Q. Mr. Anderson, was there any State land involved in the transfer of the property from you and your wife to Noel Anderson & Sons account?

A. You mean deed land?

Q. State land, leased land?

A. There was considerable leased land.

Q. And state whether or not it was a part of the original agreement that this State land would go with the deeded land? A. Yes.

Q. And what did you do with reference to the occupation of that land, the possession of it immedi-

(Testimony of Noel Anderson.)

ately after the formation of the partnership, was the operation, was it or was it not turned over to Noel Anderson & Sons partnership?

A. It was.

Q. And did you have leases from the state of Montana at that time?

A. There were leases in the name of A. E. Anderson & Son and some leases in the name of A. E. Anderson. [104]

Q. State whether or not it was a part of your agreement with them, with your sister and your mother that the State land leases would go with the rest of the property?

A. That was a part of the agreement.

Q. Mr. Anderson, was the expiration of these leases after the formation of the partnership expiration date of the leases?

Mr. Angland: Just a minute. Now I don't see that that is material at all when those leases expire; if there was a transfer of those leases, I think it is proper to go to the State Commissioner of Lands and have appropriate entry made. I think you and I and the Court are all familiar with that.

Mr. Lewis: That is what we have here.

Mr. Angland: If you have transfers for the year '45, I don't think we will have any objection.

Q. (By Mr. Lewis): Now, Mr. Anderson, you have testified that the possession of these lands they were turned over, these State lands, were turned over by you as representing the A. E. Anderson &

(Testimony of Noel Anderson.)

Son partnership and the A. E. Anderson estate to Noel Anderson & Sons?

A. That is right. [105]

Q. At the time the partnership was formed?

A. That is right.

Q. Were these lands cultivated and grazed by the Noel Anderson & Sons partnership from January 1st, '45?

A. They were.

Q. Have they been in the possession of the partnership since that time?

A. They have been.

Q. I hand you Plaintiff's proposed Exhibit 28 and ask you if you recognize the signatures thereon?

A. I do.

Q. What is the signature on that?

A. The first signature is A. E. Anderson & Son by Noel Anderson, lessee.

Q. I hand you Plaintiff's proposed Exhibit 29 and ask you to examine the signature?

A. The first signature is A. E. Anderson estate by Noel Anderson, lessee, shows representative of the administratrix.

Q. And you signed that, did you?

A. Yes.

Q. I hand you Plaintiff's proposed Exhibit No. 30 and ask you what that is?

A. It is a lease of State lands. [106]

Q. Is it or is it not a renewal of a former lease?

A. This lease is dated February 28th, '49, and is a renewal.

Q. Of a lease that was in existence January 1st, '45?

(Testimony of Noel Anderson.)

Mr. Angland: Just a minute. We will object to testimony of that kind, your Honor. If he has two leases let's see the two leases; they are the best evidence of what it is.

Mr. Lewis: Well I would like to inquire whether it is a renewal or not.

Mr. Angland: Mr. Lewis, if there is a renewal, let's see the lease that is renewed.

The Court: Is it a lease in '45?

Mr. Angland: This is a '49 renewal he is talking of; now where is the lease of '45 that was renewed?

The Court: Where is it?

Mr. Lewis: We surrender the original leases when we get new ones. I guess they don't use it any more. He already testified the partnership had control of the land from January 1st, '45, on this very land.

Mr. Angland: Your Honor, possibly the lease itself would disprove that statement. Now let's find out what the situation is. I am sure your Honor has done it and I am sure Mr. Lewis has done it; you probate an estate [107] and the deceased may have had a State lease, and finally when you finish the probate you ask the State Board to issue a new lease to the successor or interest in the final distribution, but that does not prove that the person entitled to distribution had a lease from the State at the outset and just does not prove that it isn't a renewal lease. Actually the State enters into a contract with someone entirely new.

The Court: That should be easy enough to get

(Testimony of Noel Anderson.)

the date of that original lease that was surrendered and find out if it was surrendered for a renewal lease; a renewal would say it was a renewal of a certain lease of a certain date.

Mr. Angland: He wants to say there was a renewal lease and say to the Court in this case that there was a lease between the same parties in existence prior to '49 and attempting to, by that testimony to show that such a lease was in existence in '45, and, of course, it doesn't; it isn't the best evidence of what the fact was in '45.

Mr. Lewis: I think I can straighten it out, if the Court please, if I get a chance.

The Court: All right. [108]

Q. (By Mr. Lewis): These two exhibits 30 and 31 were new leases to Noel Anderson & Sons?

A. That is correct.

Q. And had either A. E. Anderson or A. E. Anderson & Son held leases on this same land previously? A. They had.

Q. Did those leases expire? A. They did.

Q. And did you take these leases immediately following the expiration of those leases?

A. That is correct.

Q. And did you or did you not have crop on these lands during the year '45 that was harvested during the year '45?

A. Those State leases cover grazing land.

Q. Did you use those State leases, Exhibits 30 and 31, did you use that land as grazing lands in the

(Testimony of Noel Anderson.)

operation of the cattle owned by the partnership Noel Anderson and Sons in '45?

A. That is correct.

Mr. Lewis: If the Court please, the purpose of introducing this evidence now is to show continuing partnership to relate back to the beginning of '45. [109]

Mr. Angland: A continuing partnership relating back to '45, Mr. Lewis, is that what you stated?

Mr. Lewis: Well it shows that the partnership is in existence and operating, that is the purpose of it.

Mr. Angland: It shows that the State of Montana, referring specifically to Plaintiff's Exhibits 30 and 31, proposed Exhibit No. 30 shows that on February 28, 1949, the State of Montana entered into a lease with Noel Anderson & Sons; that is remote from '45 for the purpose of this case. Plaintiff's Exhibit proposed No. 31 shows that on February 28, 1952, long after the filing of this case, it shows the State of Montana entered into a lease with Noel Anderson & Sons for the leasing of certain lands. Both exhibits we submit, your Honor, do not tend to prove the existence of the very question in issue here as to whether or not the partnership was in existence in '45; to show the partnership in '49 or '52 does not show continuity that existing in the beginning in '45.

Mr. Lewis: May I state to the Court that I expect to cite to the Court cases that have decided that the actions of the partnership continuing on

(Testimony of Noel Anderson.)

through after the years involved are evidence admissible in showing good faith in entering into the partnership agreement. [110]

The Court: I think that you have to make some connection there. You can refer to '49 and '52 on a lease and say that that relates back to '45 without some proof of the relation back; it seems to me there must be some connection.

Mr. Lewis: That was the purpose of my inquiry.

The Court: If you can show some connection established, the renewal of leases of that date why I think that proof would be perfectly admissible, properly admissible if you can make that connection.

Mr. Angland: I think you have made an offer of Plaintiff's proposed Exhibits 28 and 29. We object to each of those exhibits on the grounds heretofore stated, Plaintiff's proposed Exhibit 28 is an assignment of a State agricultural grazing lease, dated March 15, 1947; it shows upon its face that Noel Anderson & Son were the assignees as of March 15, 1947; that prior thereto the lessee was A. E. Anderson & Son, which, of course, contradicts the very contention made by counsel and plaintiff in this case that the partnership of Noel Anderson & Sons was the partnership that had these lands. The assignments themselves show that they weren't made until '47; that is as to 28. Plaintiff's proposed Exhibit 29 is dated the same date, March 15th, '47, and shows the same situation.

(Testimony of Noel Anderson.)

Mr. Lewis: I think, if the Court please, I can clear it up. [111]

The Court: I will sustain the objection until the connection is made.

Q. (By Mr. Lewis): Mr. Anderson, will you state whether or not the lands described in Plaintiff's proposed Exhibits 28, 29, 30 and 31 are lands which were under lease by either A. E. Anderson or A. E. Anderson & Son prior to January 1st, '45?

A. Exhibit No. 28 is an assignment of a lease that was made on February 28th, '43.

Q. And who has been in possession of that land since the lease in '43?

Mr. Angland: Just a minute. Your Honor, we are going through the same situation right through here; and really we might as well settle it, Mr. Lewis and save the time of everybody.

The Court: He is testifying to written documents that are not present.

Mr. Angland: The record in this case does speak for itself; the lease was issued to A. E. Anderson & Son in '43 as shown by the exhibit the witness has.

The Witness: That is correct.

Mr. Angland: It was not assigned by A. E. Anderson & Son until March of '47; it contradicts the very thing that he is contending for that Noel Anderson & Sons had it [112] in '45. The assignment of the very record he has before him shows that the State of Montana had a contract with A. E. Anderson & Sons, '43 the date the lease was issued until the assignment in March, '47, and for any

(Testimony of Noel Anderson.)

other party to claim that lease would be contrary to the statutes of Montana; on the very face of it it is in conflict of the law applied.

Mr. Lewis: If the Court please, we can make proof here that these lands have been in the continuous possession and have been farmed by A. E. Anderson & Son since '43, and whenever the dates are that show on the instruments continues clear through to the present time either by A. E. Anderson & Son or Noel Anderson & Sons; now what the record title may be is immaterial. I could bring a dozen decisions into this Court to show the Court in partnership matters it does not make any difference whatsoever in whose name the property may be; it could be in one partner's name or be in somebody else's name; the thing is whether the partnership actually had possession and were operating lands or whatever it may be. Now there are plenty of decisions on that question. The facts in this case will refer to plaintiffs the entire time A. E. Anderson & Son were in operation and evidence that general business transactions are the same and the Bureau of Internal Revenue accepted it as a valid partnership. [113]

Mr. Lewis: Now it took time to get these transfers through, the estate was mixed up all the way through, and what we are attempting to show here we first show we had possession, the new partnership had possession from the start of the partnership, and now we are showing that they have now at the close of it title. They have acquired legal

(Testimony of Noel Anderson.)

title as well as actual possession and the operation on through the time. This isn't a question of the title, your Honor; this is a question of a contract between the State of Montana and A. E. Anderson & Sons. Noel Anderson was a 50 per cent partner and admittedly that question isn't raised and A. E. Anderson and A. E. Anderson & Sons is recognized as a partnership.

Mr. Angland: Now the assignment of these leases, if the Court will look at the proposed exhibit it shows it was only a matter of less than 30 days to have those assignments made when they were finally signed. They were approved in less than 30 days in '47. In '47 the assignment to my mind does not tend to prove, the assignment in '47 does not tend to prove the existence of a partnership of Noel Anderson & Sons in '45; rather it seems to me that it flies right in the face of what Judge Pope says, having the intent to form a partnership in the future at some time, and certainly to show in '47 [114] that there were overt acts to form this partnership does not prove existence of that partnership in '45. That is the very thing, I think, that Judge Pope holds; I should say the Court holds in the decision by Judge Pope in *Harkness vs. Commissioner* (C.A. 9th) 193 F. 2d 655.

Mr. Lewis: There was no evidence of partnership in existence in that very case.

Mr. Angland: Oh, yes, more than you have here, Mr. Lewis. There was a written agreement introduced in evidence.

(Testimony of Noel Anderson.)

The Court: Well you will have a chance later on to furnish authorities. The Court sustains the objection and we will admit it in the event you make the connection to show the existence of that, that they were assigned, that you took assignment later on, one was '52 and one was '49.

Mr. Lewis: And two assignments in '47.

The Court: Now it seems to me that you ought to be able to make that proof and establish that connection. There are too many years in between, too much time has elapsed to say they apply particularly to '45. Now let's hurry along.

Mr. Lewis: If the Court please, I have two or three exhibits along the same line on the operation of the partnership in the year '45. Now I don't want to take the time of the Court and it is just showing the partnership holdings, its use in the following year [115] of the formation of the partnership and I would like to; maybe we had better test out the first one.

The Court: Of course, I can see you have a very serious question arise here unless you are able to produce some evidence of '45; how is it you haven't anything on '45?

Mr. Lewis: If the Court please, there are four other witnesses to testify verbally as to what occurred in '45; it's got to be verbal testimony, and we can't take more than one witness at a time.

The Court: All right, go ahead.

(Testimony of Noel Anderson.)

Mr. Lewis: I shall leave this and recall Mr. Anderson as it seems best to do that.

The Court: All right. What have you got there?

Q. (By Mr. Lewis): Mr. Anderson, I hand you Plaintiff's proposed Exhibit No. 32 and I will ask you whether or not the firm Noel Anderson & Sons were doing business with Ragland Grocery Company during '45 at Fort Benton?

A. They were.

Q. Was that during the entire year '45 or not?

A. I am quite sure we did.

Q. And did you continue to do or not continue in business buying supplies of the Ragland Grocery during the following year '45 and on since then?

A. We have. [116]

Q. Do you recognize Plaintiff's proposed Exhibit 32? A. I do.

Q. Does that represent an account that you had with Ragland Grocery? A. It does.

Q. Did you pay that account? A. I did.

Q. And did you or did you not receive that as a receipt? A. I did.

Mr. Lewis: We offer in evidence Plaintiff's Exhibit 32.

Mr. Bowen: Objection, your Honor.

The Court: This is June 1st, '46.

Mr. Angland: The same situation, your Honor.

Mr. Bowen: Your Honor, if the Court please, by admission of counsel here the only casual connection between this proposed exhibit and the year '45 is the testimony of this interested party. I would like

(Testimony of Noel Anderson.)

to refer to the language of Judge Black in the Lusthaus vs. Commissioner case (327 U.S. 293, 302) decided in '45, which language was approved directly by the majority opinion in footnote 13, page 744 of the Culbertson case (Commissioner vs. Culbertson, 337 U.S. 733, 742) the language is "bona fide intent." He testified to his intent in '45, no act, no overt act relating and beginning in the year '45. We can't crawl into the brain of this [117] witness. We have to determine what he intended from what was done; he has shown no casual connection with facts, factors or acts, actual goings-on in the year '45, and we object to the admission of this exhibit as we objected to acts after '45 earlier today.

The Court: Are all of them '46 again?

Mr. Lewis: Yes.

The Court: I think I will have to sustain the objection.

Mr. Lewis: Very well.

The Court: I will sustain the objection.

Q. (By Mr. Lewis): Mr. Anderson, did your wife Agnes do any work in connection with the work of the partnership of Noel Anderson & Sons during the year '45? A. She did.

Q. What did she do?

A. She hauled wheat during harvest, performed errands going to town and getting supplies, repairs, attending to little details that I didn't have the time for.

Q. Had she done work of that character prior to '45 for the whole partnership?

(Testimony of Noel Anderson.)

A. She had. [118]

Q. What did it consist of aside from what you testified this morning about her driving the tractor, the pickup or the tractor?

A. She supervised the, did the cooking and some years and in other years she supervised the cooking with help for the hired help of the ranch.

Q. Can you recall the years?

A. Well not all the years.

Q. Who conducted the farming operations on the Anderson ranch during the season of '45?

A. You mean who did the work?

Q. Yes and in whose name?

A. In whose name was it?

Q. Who, what, who were the owners of the operation in '45?

A. My wife, myself and our two sons.

Q. Under what designation is it a partnership?

A. Noel Anderson & Sons.

Q. And was any other work done by any other agency or individuals on that ranch during the entire season '45 other than what was done by the partnership Noel Anderson & Sons?

A. We had a hired man.

Q. Well who was the hired man working for?

A. Noel Anderson & Sons. [119]

Q. Each one except Noel Anderson, Jr., contributed their services during '45 to the farming operation? A. That is right.

Q. And Noel Anderson, Jr., as you already testified, contributed to the preparation of the crop and

(Testimony of Noel Anderson.)

with seeding of the crop for '45 in '44 prior to his entry into military service?

A. That is correct.

Mr. Lewis: If the Court please, I think that is all at this time but I would like to have the right to put Mr. Anderson back on the stand later on.

The Court: You may proceed with your cross-examination.

NOEL ANDERSON

Cross-Examination

By Mr. Bowen:

Q. Mr. Anderson, I don't believe it was brought out on direct about your formal schooling and education; would you care to state briefly what that was?

A. I had the equivalent of high school education.

Q. And you noted on direct that you were married in '25?

A. That is right. [120]

Q. And by '35 you had two of the three children?

A. Our last child was born in August, '35.

Q. So you had the four children in '35?

A. We did.

Q. In '35 you had been on the ranch of A. E. Anderson since '17, a period of 18 years, is that correct?

A. Most of the time.

Q. Could you give us your best recollection of the nature of the managerial duties that you assumed beginning in '35?

Mr. Lewis: Just a minute. If the Court please, that is objected to on the ground that the Bureau of

(Testimony of Noel Anderson.)

Internal Revenue has already passed on the validity of the partnership of A. E. Anderson & Son. I don't know why it would be material.

The Court: Well I think on direct examination you have covered that ground as to his activities and what he did and so forth, and that being the case, I think counsel would have a right to cross-examine on such matters as you brought out on direct examination; perhaps it wasn't material in either event, but you brought it out and I think he should cross-examine. Do you recall the question?

A. No. [121]

(Question read):

Q. Could you give us your best recollection of the nature of the managerial duties that you assumed beginning in '35?

A. I assumed no managerial duties; my work was to do the field work, the rough work.

Q. How old was your father in '35?

A. In '35 he would have been 61 years old, I believe.

Q. What was the condition of his health at that time? A. His health was good at that time.

Q. Did your mother contribute to the normal chores that a housewife would contribute to as of that time on a ranch? A. She kept the house.

Q. She did no, she didn't aid in the ranch chores or farm chores? A. She did not.

Q. Did she at an earlier time?

A. She never did.

Q. She never did aid in ranch chores or farm chores of any kind? A. No.

(Testimony of Noel Anderson.)

Q. Was her health bad? A. Help?

Q. Her health, was it bad at that time or at an earlier date in '25? [122]

A. Her health was not good.

Q. Do you have brothers?

A. I have no brothers.

Q. You said, I believe, on direct, Mr. Anderson, that you made your home on the ranch until the fall of '48? A. '38.

Q. In '38 you moved to town?

A. Yes, moved the family.

Q. Well the family lived in town through the year in issue, '45? A. During the school year.

Q. Mrs. Anderson lived there during the school year? A. Yes.

Q. Did she live there during the summer months? A. She did not.

Q. Isn't it true, Mr. Anderson, that beginning in '38, at which time you left the ranch and moved to town that you hired a hired man and his wife to take over the ranch?

A. Not to take over the ranch.

Q. To take over the ranch and the chores and to live at the ranch and care for the house?

A. To work on the ranch, yes.

Q. Did not that woman do the cooking at the ranch from '38 to and including '45? [123]

A. We had various different couples there and the women folks would do the cooking, helped with the cooking.

(Testimony of Noel Anderson.)

Q. You have testified that your two boys, Noel and Robert, contributed to work on the ranch, did they do anything that any other farm boy in this area would do, anything more than any other farm boy would do in this area?

A. Probably not but they did it.

Q. Returning for a minute to your discussion, to your purported discussion in '44 with Mr. Lewis, you stated that the discussion related to the legal consequences of forming a partnership, what do you mean by legal consequences?

A. I believe I stated legal aspects.

Q. What legal aspects did you have in mind?

A. Well the way he answered the question was that if a partnership was formed and operated in good faith, he could see no objection to it.

Q. I see, if the partnership were formed and operated in good faith, he would see no objection to it. For what purpose? Who would object to it. Who did you have in mind as possibly making an objection to it, the Bureau of Internal Revenue?

A. Possibly. [124]

Q. Were you concerned at that time with the high and increasing surtax rates which were brought about by the increased spending due to our war effort at that time?

A. I probably was.

Q. You were then conscious of the tax saving that would result if you could split your income between the members of your family?

A. I certainly was.

(Testimony of Noel Anderson.)

Q. That was a consideration in forming this partnership? A. It was one of them.

Q. What other?

A. Other and all important fact was that our boys wanted to farm. I needed their help in operating the farm and I could see no reason why I could not offer them something better than wages for their services on that ranch. They can go any place in the United States and draw wages.

Q. In '44 at this purported conference with Mr. Lewis had you consulted anyone whom, when you allegedly decided at that time this partnership allocation you proposed should be made $\frac{1}{3}$ to yourself, $\frac{1}{3}$ to your wife and $\frac{1}{6}$ to each of your boys?

A. I hadn't consulted him at that time, no. [125]

Q. We were a little confused on direct, Mr. Anderson, with the chronological activities beginning with your father's death in December of '43. Could you state in your own language briefly what happened beginning with your father's death in '43?

A. I remember that my mother petitioned for letters of administration. She was appointed administratrix of the estate, and early in the year of '44 I got together with my mother and sister and discussed the proposition of buying their interests in the estate property.

Q. Was there any misunderstanding at the time as to what share of the estate should go to you and what share should go to the other two heirs of your father, they being your mother and your sister?

A. There was some misunderstanding.

(Testimony of Noel Anderson.)

Q. Then this misunderstanding possibly contributed to the fact that your father's estate was in the process of probate from December, '43, to August, '46, a period of nearly 30 months, could that have contributed to the length of time?

A. I don't think so. The agreement was made quite a long time prior to the date of final distribution.

Q. Are you aware, Mr. Anderson, of a statute in Montana requiring you to have in writing any agreement relating to the transfer of land? [126]

Mr. Lewis: That is objected to as improper cross-examination, also calling for a conclusion of the witness on a question of law.

The Court: Yes, I think so, sustain the objection.

Mr. Bowen: May I state that differently, your Honor?

Q. You have just suggested, Mr. Anderson, that in '44 you considered the over-all facts of a family operation of the farm, you had the benefit of counsel at that time, did you not? A. Yes.

Q. Were you counseled as to the need of a written agreement for——

Mr. Lewis: That is objected to for the same reason; it is improper cross-examination; that matter was not gone into at all, and it is also calling for a conclusion of the witness.

Mr. Angland: May it please the Court, I don't think it is. He says the agreement with his sister and mother was made in '44, and he has offered in evidence deeds dated '46, and we are trying to find

(Testimony of Noel Anderson.)

out whether there was a partnership in existence that included these lands that weren't deeded until '46.

Mr. Lewis: Well if you would ask that question instead of arguing questions of law with him, all right. [127]

The Court: Question him in that way then.

Q. Then was there anything in writing, Mr. Anderson, as of '44 whereby you agreed to purchase the respective interests of your mother and your sister? A. There was nothing in writing.

Q. So apparently the situation in '44 and until this purported agreement was consummated in '46 was in an executory stage, by that I mean you intended in the future to effect purchase of their respective interests, and you intended in the future to transfer your interests in part to your sons and in part to your wife, is that correct? You didn't have anything to transfer in '46, did you; that at least you didn't have anything that then was owned by the two heirs other than yourself? A. No.

Q. Mr. Anderson, I believe the record will show that the purchase price of these $\frac{1}{6}$ interests of your father's estate purchased by you evidenced by the deed in '46 and purchased by you from your sister and your mother, the purchase price was \$9,000.00, is that correct? \$9,000.00 plus?

A. That was $\frac{1}{3}$; \$9,000.00 plus.

Q. You paid \$9,000.00 each to your mother and to your sister for their $\frac{1}{6}$ interest, isn't that correct? A. That is correct. [128]

(Testimony of Noel Anderson.)

Q. That is correct, on or about \$9,000?

Mr. Lewis: If the Court please, I don't think that is a fair question. The testimony on direct examination was he bought $\frac{1}{3}$ and paid for it and then counsel is trying to get the witness to say there is another $\frac{1}{6}$ interest.

Mr. Bowen: I believe the deed will sustain this was a total of two $\frac{1}{6}$ interests owned each by the widow, Mrs. Anderson, the mother, and his sister.

Mr. Lewis: The part of the property included in this deal was all owned by A. E. Anderson, the whole Kingsbury ranch.

The Court: Well let's not argue about that, if there was a separate consideration for the $\frac{1}{6}$ interest of the mother and sister.

Q. (By Mr. Bowen): What I am getting around to, Mr. Anderson, is this, yet although you paid \$9,000.00 each for those respective interests, you sold the same or you purported to sell or agreed to sell in '45 the same interests to your sons for \$75,000.00; how do you account for that discrepancy?

A. There was some difference in the inventory on that property. [129]

Q. As I recall the deed dated May 15, 1951, at which time you transferred the real property, the $\frac{1}{6}$ interest to your son refers to known properties, the only reference there, and the exhibit speaks for itself, is to real property therein described. Could it be that maybe there had been a decline in real estate value, would you suggest that, in '45?

(Testimony of Noel Anderson.)

A. No.

Q. Did you have any understanding with your sons about payment as of a certain date or were they allowed just to pay when they could?

A. The agreement was that they would pay for their interests out of their earnings in the partnership.

Q. If there were losses, of course, they would not be accountable for any payment to you?

A. That is right, share and share alike.

Q. It has been brought out on direct, Mr. Anderson, about the presumably adjustment and addition to the income of the partnership in '45 of some \$11,000.00 taxable to you as your 50 per cent share of the income earned by A. E. Anderson & Son; you recall that, do you not?

A. I do.

Q. Do you recall then a conference which was the upshot of that adjustment and was the upshot of this alleged partnership agreement? Do you recall then a conference in April, '47, when Revenue Agent Roy M. Crismas—

A. I do. [130]

Q. You do recall that conference?

A. Yes.

Q. Do you recall at that time an offer made by you in order to settle the additional tax liability which you asserted that you would agree to a 50 per cent allocation of income to you if he would in turn agree to 25 per cent allocation each to your two sons, Noel and Robert?

Mr. Lewis: Just a minute. That is objected to as

(Testimony of Noel Anderson.)

being improper to; any offer of compromise that wasn't followed out is not admissible in evidence.

The Court: Sustain the objection.

Mr. Bowen: Your Honor, what I intend to show by that is not so much the truth of the allegation asserted but to show as a matter of fact that he would presumably have the control and domination of the alleged family partnership, which would allow him to enter into such a——

The Court: If they had discussions as to a compromise, proposed settlement and it wasn't carried out that wouldn't be allowed in evidence I don't think; that has been the rule for a long time those compromises should be eliminated. They were not carried out apparently.

Q. (By Mr. Bowen): You state, Mr. Anderson, that in '45 one of the reasons that you contributed this \$11,000.00 to Noel Anderson & Sons partnership was because they needed [131] money to operate. Do you recall that statement? They had no money and this \$11,000.00——

A. I can't recall that I made that statement.

Q. It has been brought out on direct that Robert had certain withdrawals credited to his account on this partnership account book for '45, is that correct, Mr. Anderson? A. That is correct.

Q. Do you remember how those withdrawals were made?

A. They were made in the form of checks issued to them.

(Testimony of Noel Anderson.)

Q. Those checks were drawn by you, were they not?
A. They were.

Q. On your joint account with your wife, Mrs. Anderson, were there any other withdrawals by members of your family in '45 other than Robert?

A. From the partnership income, you mean?

Q. In the money or partnership income?

A. Yes, there were.

Q. There were? A. Yes.

Q. To whom were those distributions made?

A. To my wife and myself.

Q. That appears in your account book?

A. It does.

Q. How were they made to your wife?

A. Made in the form of deposits to our joint account. [132]

Q. Getting back again, Mr. Anderson, to the conference in April, 1947, between you and Mr. Roy M. Crimas, the revenue agent, do you recall his requesting of you all the books of accounts, books and accounts of the purported Noel Anderson & Sons partnership? That would be a normal request that any agent would make on the audit of a purported partnership.

A. I don't recall if he made a request for all books or not.

Q. Do you recall what books were made available, if any, to him at that time?

A. I can't remember but I am quite sure he had the farm account book.

(Testimony of Noel Anderson.)

Q. On examination of Exhibits 25 and 26, which were those Commodity Credit Corporation contracts, which purported to be those contracts, then we agree as we were attempting to then that because the call date was 12/31/46 that payment would have to be made subsequent to that but in accordance with the C.C.C. contract?

A. Payment was made subsequent to that date.

Q. Sometime in '47?

A. The check came to me in '47.

Q. We have just covered testimony, Mr. Anderson, relating to the alleged intent back in '44 to transfer to the partnership certain lands leased from the State of Montana, you recall that statement? Strike that question.

Mr. Angland: I think the Court rules [133] those exhibits were excluded.

Mr. Bowen: They were.

Q. (By Mr. Bowen): Mr. Anderson, did you make out the federal income tax returns of yourself, your wife and your two sons in '45?

A. Mr. Lewis made those.

Q. He made them out with your aid?

A. That is right.

Q. Did you sign returns other than your own for the year '45?

A. I probably did. Noel J. Anderson was not there at the time the return was made.

Q. Do you recall signing you say your son Noel's and your son Robert's income tax return?

(Testimony of Noel Anderson.)

A. Robert was at college. I don't recall signing it but I might have.

Q. Does this refresh your recollection? That is your signature on both those returns, is it not?

A. That is correct.

Q. Do you recall how the income tax reported as due on their returns, on your return and your wife's return was paid for '45? The income tax as returned originally do you recall how that was paid, was it paid by your check?

A. I don't recall just how it was paid; all I know it was paid. [134]

Q. You don't deny that it was paid by your check?

A. I believe it was paid from the joint account.

Q. Of you and Mrs. Anderson?

A. That is correct.

Q. Is it customary for you to pay the income taxes of your sons? A. It is not.

Q. But you did?

A. It was charged against them.

Q. Is it customary for you to sign their returns?

A. No, when they are available to sign them themselves.

Q. Do you recall making application back in the years in issue or the years immediately thereafter, '46 and '47, for gas refunds with the State Board in Helena?

A. I probably did. We haven't made an application for refund for several years.

(Testimony of Noel Anderson.)

Q. Do you recall in whose name it was made, this application? A. I don't recall.

Q. To refresh your recollection, does this, sir, help you? Do you deny that application was made in your name in '45, '46 and '47?

A. I can't deny that.

Q. Will you, Mr. Anderson, draw out a rough diagram of cattle brands, if any, registered in your name or in your family's name during the years in issue? In the name of A. E. Anderson, Noel Anderson or Noel Anderson & Sons. In other words, that is brands registered in [135] the name of your family, will you draw out their holdings?

A. Yes.

Q. How would you describe those brands to an Easterner, or to anyone for that matter?

A. I would describe the one brand as "Heart Lazy A" with quarter circle underneath; and the other brand as "X hanging K", I would call it.

Q. X hanging K. And those are the only two brands recorded in the name of your family?

A. That is **right**.

Mr. Bowen: I would like to introduce that in evidence.

Mr. Lewis: What is the purpose. I would object to it unless it is connected up with something else.

Mr. Bowen: The purpose is to show that registration of these two brands was continued through the year in issue in the name of A. E. Anderson or Noel Anderson and immediate succeeding years; June 5, 1951, for the X hanging K and June 5, 1951, for the Heart Lazy A quarter circle.

(Testimony of Noel Anderson.)

Mr. Lewis: That is objected to unless counsel will agree that although happening since '45 it has something to do with the '45 partnership. Now we are right on the other side of the fence from where we were a while ago. Now if you will agree or are ready to agree to allow that evidence to go in between '45 and the [136] present time as to what happened in this partnership, then I will not object to that; but if you are not going to allow the other evidence to go in, then I will object to this as being improper cross-examination, too.

Mr. Bowen: I think we could meet the objection two ways, your Honor. We are showing, first, the continuity of the ownership of this brand beginning with May 8, '43, when it was in the name A. E. Anderson as of October 3rd, '46, when registered in the name Noel Anderson; remember, they argue the partnership existed as of January 1, '45, yet the brand name was registered in the name Noel Anderson, October 3rd, '46, which is inconsistent with their allegation, and not until June 5, '51, as to the X Lazy K brand and June 2, '52, on the Heart Lazy A quarter circle A brand was it recorded in the Noel Anderson & Son partnership name. It seems to me the line is clear, it continues through the year in issue and shows that not until '51 and '52, respectively, was there a change in the registration of the brand.

Mr. Lewis: The objection is further that it makes no difference anyway as to whose name the brands may have been in. It makes no difference

(Testimony of Noel Anderson.)

as far as the case is concerned if all of the property appeared to be in the name of Noel Anderson as to the validity of the partnership. We have decisions galore along this line to the effect that the title to any property is not conclusive as to whether it was a partnership or not, and [137] what may have happened in the last year or two would have nothing to do with the case under counsel's interpretation of it.

Mr. Bowen: Your Honor, he misconstrues our objections. We objected to the showing of what happened in '47 and '48, '49, '51, and '52 a while ago because he did not trace the relevancy of that particular exhibit to '45; on the other hand, there is clear continuity and clear casual connections made herein and offered.

The Court: Well, I will allow it to go in for whatever it is worth. Overrule the objection.

The Court: I think we had better suspend here. Court will stand adjourned until tomorrow morning at 10:00 o'clock. (5:05 p.m., 12/11/52.) [138]

(Court resumed, pursuant to adjournment, at 10:00 o'clock a.m. on December 12, 1952, at which time counsel and parties were present.)

The Court: Good morning, gentlemen. You may proceed.

NOEL ANDERSON

resumed the stand and testified as follows:

Cross-Examination

(Continued)

By Mr. Bowen:

Q. Taking up, Mr. Anderson, where we left off yesterday with our discussion of livestock brands in the names of the Anderson family, I believe it was established that the Anderson family had only two brands, is that correct? A. That is correct.

Q. The X hanging K and the Heart A quarter circle? A. That is correct.

Q. You had sales of cattle transactions in '45, did you not? A. Yes.

Q. Do you recall in whose names those sales transactions were executed?

A. The cattle brands were in my father's name.

Q. The cattle brands were in your father's name in '45? A. That is right. [139]

Q. That continued throughout all the year?

A. The year of '45, yes, sir.

Q. Does this document reflect to your best recollection the sequence of recordations of your family's brand name with the State Livestock Commission? There are two documents there.

A. There is one date here that is not correct.

Q. What is that date, Mr. Anderson?

A. June 5th, '52, with reference to the Heart Lazy A quarter circle brand.

Q. And what is that reference, Mr. Anderson?

(Testimony of Noel Anderson.)

A. I have brand as rerecorded here in a document showing a date of June 5th, '51.

Q. And this paper that I have handed you shows it recorded when?

A. Shows it recorded June 5th, '52.

Q. And you had '51?

A. On this document.

Q. But the references other than the part Heart Lazy A quarter circle for '52 are correct then to the best of your knowledge? A. They are.

Q. Then is it true, Mr. Anderson, that during the year '45, any cattle sales, of which I believe you report nearly \$4,000.00 in the partnership return for '45, all of those cattle sales would have been made in the name of A. E. Anderson & Son, is that correct, in order to transfer title in accordance with the brand registration? [140] To pass good title you would have had to make the transaction in the name of A. E. Anderson and Son, isn't that true?

A. The brand is recorded in the name of A. E. Anderson and the title is not transferred at that time.

Q. The title to cattle? A. Was not.

Q. The sale of which occurred in '45?

A. They were sold at the market, livestock market, and the returns came to the A. E. Anderson Estate, I believe.

Q. In other words, the sales made of cattle which you reported on the partnership return of '45, which sales total approximately \$4,000.00, were

(Testimony of Noel Anderson.)

made in the name of A. E. Anderson, is that correct? A. The brands were recorded.

Q. As recorded with the State Livestock Commission in Montana? A. That is right.

Mr. Bowen: Your Honor, I submit these in evidence, the portion that relates only to the year '45 because we see that according to Mr. Anderson's testimony the reference with regard to the brand Heart Lazy A quarter circle, June 5, '52, the reference that on that date the brand name was first registered in the name of Noel Anderson & Sons should have been corrected to June 5, '51. Is that your understanding? A. That is right. [141]

Mr. Bowen: With that correction then I submit these in evidence.

Mr. Lewis: To which we object, if the court please, as not the best evidence unless counsel will agree to accompany it with the original brand certificate which is the best evidence of what is reported, and further I would like to inquire, first, if the court please, to make sure if this represents the correct record.

The Court: I suppose there will be no objection to submitting the original certificate of brand, if they have it.

Mr. Lewis: Do you propose to submit the original?

Mr. Bowen: No, I propose you do it.

Mr. Bowen: Do you have those with you?

A. I do not.

(Testimony of Noel Anderson.)

Mr. Bowen: You have only the one relating to the year '51?

Mr. Bowen: That is when the brand was recorded and transferred to Noel Anderson & Sons.

Mr. Bowen: In answer to his objection, your Honor, the witness himself has testified to the validity of what is shown on those two exhibits which are certified. I don't see that any more has to be shown to substantiate the truth.

The Court: I think so. I will overrule the objection and admit the exhibits. (Nos. 34 and 35.) [142]

Q. Mr. Anderson, you touched briefly on direct examination on the sale of wheat in your family name in the year '45; do you recall with whom you transacted your wheat sales largely at that time, what elevator company?

A. It would probably be with the Greeley Elevator Company and the General Mills.

Q. A substantial amount of your business was transacted with Greeley Elevator?

A. I believe so; I am not sure.

Q. Isn't it true that they have three stations in the vicinity of your ranch, Loma Station, Fort Benton Station and Highwood Station?

A. You say Highwood?

Q. Yes, sir. A. That is correct.

Q. And if you transacted business with the Greeley Elevator Company, you would have probably done that through either of those three stations? A. One or two stations, normally.

Q. Which two more than likely?

(Testimony of Noel Anderson.)

A. Loma and Virgil.

Q. Do you recall in whose name in '45 you executed wheat sales? You may refresh your recollection.

A. You are referring to the year '45 now?

Q. The year '45, yes, sir, the year in issue.

A. It appears here that wheat was sold in my name and the name of A. E. Anderson & Son. [143]

Q. Is that correct to the best of your knowledge?

A. If that is a record, to the best of my knowledge it is correct.

Q. Did you sell any wheat during the year '45, the year in issue in the name of Noel Anderson & Sons? A. Not in the year '45, I don't think.

Q. You transacted business with the Triple A office in Fort Benton during the year '45, did you not? A. Yes, I think I did.

Q. What is the nature of the business that a farmer and rancher in Fort Benton would transact with the Triple A office?

A. A farmer who was in the program will sign up with the program.

Q. I see, by signing up the program you mean signing up with the Triple A program for wheat benefits? A. That is correct.

Q. What is the nature of those benefits as far as you are concerned?

A. Well, some of the practices or benefit payments are for strip cropping, reservoir building.

Q. So if you agree to plant your wheat accord-

(Testimony of Noel Anderson.)

ing to this Government scientific method, then you get certain cash benefits for that, is that correct?

A. That is correct. [144]

Q. And also if you restore or preserve your land by building dams, you get benefits for that?

A. That is correct.

Q. You report in your '45 partnership return an expense incurred in the building of a dam, is that correct? A. Yes.

Q. Was that expense incurred and carried to your knowledge with the Triple A office in your name or the name of A. E. Anderson & Son?

A. I believe it was A. E. Anderson & Son.

Q. To your knowledge was any business carried on with the Triple A office in the name of Noel Anderson & Sons? A. Not in the year '45.

Q. Was any business carried on in '45 with the Triple A office in your name? To the best of your recollection. I know that is a long time ago.

A. Not that I can remember.

Q. The only business then carried on with the Triple A was with reference to strip planting and conservation programs would be in the name of A. E. Anderson & Son?

A. I believe that is correct.

Q. Turning again, Mr. Anderson, to the year '45, do you recall in whose name State property taxes were paid of your family property to the State of Montana through the County Treasurer's office in Fort Benton? [145]

A. Estate taxes, you say?

(Testimony of Noel Anderson.)

Q. That is right. I don't mean estate; State of Montana taxes. I mean, Mr. Anderson, County of Chouteau, not State of Montana taxes, in whose name were those taxes paid in '45 on the family property?

A. I believe they were paid in the name of A. E. Anderson & Son.

Q. That was consistent with the manner in which deeds to the property were registered at that time, is that correct? Deeds to the family property were recorded?

A. No, the deeds were in my father's name. The taxes on this property were paid as a part of the expense of operation of the partnership of A. E. Anderson & Son.

Q. Were any taxes paid in the name of Noel Anderson & Son in '45? A. I think not.

Mr. Bowen: No further questions, your [146] Honor.

NOEL ANDERSON
Redirect Examination

By Mr. Lewis:

Q. Mr. Anderson, you stated on cross-examination that you made certain cattle sales in '45?

A. That is correct.

Q. And you received the proceeds of those sales, did you? A. Yes.

Q. Now, where did you place the credit for the proceeds of those sales on the books on your account books and on the income tax return?

(Testimony of Noel Anderson.)

A. They were credited to the A. E. Anderson & Son account.

Q. In the bank?

A. In both the bank and in the farm account book.

Q. For '45? A. For '45.

Q. Were any part of those proceeds reported on the amended return as being proceeds from the Noel Anderson & Sons partnership that year? I had better let you see the return.

Mr. Bowen: Your Honor, that return is in evidence; it speaks for itself. In the interest of time he is duplicating.

The Witness: May I back up on that statement?

Mr. Lewis: Certainly. If you want the exhibit to refer to, you may have it. [147]

A. The proceeds from the sale of cattle for '45 were deposited to the A. E. Anderson & Son account but they were entered in the farm account book of Noel Anderson & Sons.

Q. And how were they reported in the income tax return?

A. They were reported as income of Noel Anderson & Sons.

Q. Were there any sales in '45 of cattle belonging to the A. E. Anderson & Son partnership?

A. Not in '45.

Q. You say these sales were entered on your books as receipts for Noel Anderson & Sons and were so reported in the income tax return?

A. That is correct.

(Testimony of Noel Anderson.)

Q. Now you stated in your cross-examination that you did not believe that any wheat, '45 wheat sold in '45, was sold in the name of Noel Anderson & Sons? A. That is correct.

Q. Now, was there any '45 wheat sold in the spring or during the year of '46 in the name of Noel Anderson & Sons? A. There was.

Mr. Angland: I think that is repetition, your Honor. It is repetitious. I believe he went into that yesterday on direct. [148]

The Court: Well, it is redirect and reiterating some of it.

Q. And in whose name was the—I believe you testified, Mr. Anderson, that the real estate was in the name of A. E. Anderson during '45, during '44?

A. That is correct.

Q. Now, what is the policy, if you know, in matters having to do with the Conservation Office with reference to applications, for instance, for a dam, are the applications made considerably in advance?

A. Yes, they are.

Q. And do you recall whether or not this application for this conservation work which involved this dam was made in '44 or talked over in '44?

A. If the dam was built in '45, it was applied for in '45.

Q. Now in '45 you showed on the return of Noel Anderson & Sons the payment of work on dam, did you not? A. That is correct.

Q. And was that labor, expended, performed and paid for by the firm of Noel Anderson & Sons?

(Testimony of Noel Anderson.)

Mr. Angland: Just a minute. That is the very question in issue, your Honor, is whether or not there was a Noel Anderson & Sons in existence in '45. It is admitted that he submitted his return showing those charges to what he alleges as a partnership in '45. [149]

Mr. Lewis: I will be glad to withdraw the question and rephrase it.

Q. Mr. Anderson, was the labor performed as shown there a part of the expense of the farming operations of Noel Anderson & Sons during the year '45? A. That is correct.

Q. And was it so entered on your account books?

A. It was.

Q. And so entered in the return?

A. That is correct.

Q. Now, Mr. Anderson, was there during the year '45, as you stated the ownership, the title to the lands were in the name of A. E. Anderson?

A. That is correct.

Q. And did you pay taxes on those lands in '45?

A. Yes, I did.

Q. Now, Mr. Anderson, you, of course, paid those taxes with checks on the account of A. E. Anderson & Son, is that right?

A. That is correct.

Q. And I believe you testified yesterday that that was the only bank account so far as your business was concerned during the years '44 and '45 and up to May 1st, '46, is that correct?

A. That is correct. [150]

(Testimony of Noel Anderson.)

Q. So that all of the expenses of the partnership of Noel Anderson & Sons so far as the payments were concerned were made out of that one account?

A. That is correct.

Q. And I think you testified yesterday, did you not, that that account carried business for the partnership of A. E. Anderson & Son which was being closed up and it carried business, some business for the estate, and it carried some business for Noel Anderson & Sons, is that correct? A. Yes.

Mr. Angland: Just a minute. We will object to any further questioning along this line, it is repetition.

The Court: This is not redirect. This is repetition of the testimony of the witness in chief.

Mr. Lewis: Yes, if the court please, but I am getting to the point of property taxes and that is my next question.

Q. Now the property taxes that were gone into on cross-examination, where were those taxes charged on your books, against whom?

A. For the year '45?

Q. Yes.

A. They were charged against the partnership of Noel Anderson & Sons. [151]

Q. And was it a part of the regular expense of the partnership? A. It was.

Mr. Angland: I am going to move to strike, your Honor, the last two questions and the last two responses. The witness is testifying from an exhibit

(Testimony of Noel Anderson.)

which is in evidence, the partnership return filed by Noel Anderson & Son, the very matter that must be determined by the court was whether or not it was in fact a partnership. It is merely repetition. It is merely incumbering the record.

The Court: Well, we will let it stand if he quits now, but if he continues to restate the case and re-introduce the evidence in chief, why, we will have to stop him.

Mr. Lewis: I think that is all on redirect.

Mr. Bowen: Your Honor, one question.

NOEL ANDERSON

Recross-Examination

By Mr. Bowen:

Q. You state, Mr. Anderson, in regard to the dam expense incurred in the year '45 that it was carried on your partnership return as expense of Noel Anderson & Sons; how was that expense paid?

A. The expense was paid by a check on the A. E. Anderson & Son account. I believe it was paid to the P.M.A. office and they in turn paid the contractor.

Mr. Bowen: No further questions. [152]

The Court: Call your next witness.

Mr. Lewis: May I inquire of Mr. Anderson a few questions on——

The Court: On what?

Mr. Lewis: I asked for a reservation to be permitted to put Mr. Anderson on the stand again,

after I took him off yesterday, and there were a few questions I would like to ask him further.

The Court: You mean to put him back and examine him in chief?

Mr. Lewis: That is right.

The Court: On matters you haven't brought out before?

Mr. Lewis: That is right.

The Court: Well, all right, go ahead, and be as brief as you can.

NOEL ANDERSON

resumed the stand and testified as follows:

Direct Examination (Continued)

By Mr. Lewis:

Q. Mr. Anderson, on what bank account did you pay the expenses of the partnership of Noel Anderson and Sons beginning with May 1st, '46?

Mr. Angland: That is objected to, your Honor, as repetitious. [153]

The Court: Didn't you go into that yesterday?

Mr. Lewis: If the court please, we are back where we were and it is my purpose now to introduce some exhibits showing what occurred in '46, too, from '45.

The Court: Exhibits you offered in evidence yesterday?

Mr. Lewis: No, not that I offered in evidence yesterday.

(Testimony of Noel Anderson.)

The Court: All right, show your exhibits to counsel and let's try and dispose of this.

Mr. Angland: If they are connected with '45, and there is a continuity, I will advise counsel and this court we are not objecting if there is continuity. This first one is Ragland Grocery, May, '46. There isn't anything to show that Noel Anderson & Sons partnership transacted business with the Ragland Grocery in '45. Now a continuity we will not object to. We desire to submit '45 and not go into '46 and attempt to have that transaction relate back to prove the existence of something in '45. That is our objection to it.

The Court: Well, that is a proper objection.

Mr. Angland: That is the first one tendered to us and that is the only one I have noted, a '46 check to Ragland Grocery. Of course, the witness testified he did the business in the name Noel Anderson & Sons. [154]

The Court: Does this check show it?

Mr. Angland: Not in '45; it shows a transaction in '46.

Q. (By Mr. Lewis): Mr. Anderson, did the firm Noel Anderson & Sons do business with the Ragland Grocery Company in Fort Benton during the year '45? A. They did.

Q. And was that business continuous through the year '45? A. It was.

Q. And was it continuous then beginning with the year '46? A. It was.

Q. And up to May 1st and after in '46?

(Testimony of Noel Anderson.)

A. It was.

Mr. Lewis: I will have this marked.

Q. I hand you Plaintiff's proposed Exhibit 36 and ask you if you recognize it? A. I do.

Q. What was that given for?

A. That was a check given to Ragland Grocery for the April account.

Q. Of Noel Anderson & Sons?

A. And was paid from the account of Noel Anderson and Sons. [155]

Mr. Lewis: I am offering it in evidence now.

Mr. Angland: Well, we are going to have to object. Now this is an attempt after the establishment of a bank account by Noel Anderson & Sons in '46 a check was issued by that firm. Yesterday a witness was called out of order without objection on our part to permit him to testify concerning dealings with the Ragland Grocery; he could produce no evidence, documentary evidence, to show dealings in '45. It is admitted that the witness has testified he did business with the concern in '45; he says he did business with it in '46, so we give the same weight to the plaintiffs in '45 and '46 by his statement and by documentary evidence in '46 to prove there were transactions in '45 without any evidence.

The Court: I will sustain the objection.

Mr. Lewis: If the court please, yesterday there were certain leases offered in evidence and the court suggested if the assignments were assigned up to previous leases, they might be admissible. We now

(Testimony of Noel Anderson.)

have the leases that were assigned by those assignments and I would like now to inquire as to Plaintiff's Exhibits No. 29 and No. 28, which I wish to include as not only the assignment but the lease attached to it. [156]

Q. (By Mr. Lewis): Mr. Anderson, I hand you Plaintiff's proposed Exhibit 29. How many State land leases, Mr. Anderson, did you have, did the old partnership of A. E. Anderson & Son have from the State of Montana?

A. I believe there were six separate leases.

Q. And in whose name were those leases at the time of the old partnership before the death of your father?

A. One large lease was in the name of A. E. Anderson and Son and the other leases were in the name of A. E. Anderson.

Q. Now, do you know what the expiration dates of those leases were in January?

A. The expiration dates varied.

Q. And over what time did they stretch?

A. Well, from, I believe the expiration date strings from '39 to '52, probably '53.

Mr. Angland: Mr. Lewis, possibly we can save you time and the time of the court. Do you have leases that were in existence in '45 and you are carrying them on through concerning assignment dates and all. We may stipulate that they all go in?

Mr. Angland: Mr. Lewis, I want to be absolutely fair in this matter. We are going to agree and will agree now it's been admitted in evidence they tend,

(Testimony of Noel Anderson.)

I think they tend to disprove the Plaintiff's case.

They show assignments were made in '47. [157]

The Court: Has he offered them in evidence?

Mr. Lewis: Yes, they were marked Plaintiff's Exhibit 29.

The Court: You offer them in evidence?

Mr. Lewis: Yes, I do.

The Court: Any objection?

Mr. Angland: No.

The Court: They may be received in evidence. Proceed to something else.

Q. (By Mr. Lewis): Mr. Anderson, there are other leases and I hand you now Plaintiff's proposed Exhibits 30 and 31 and ask you whether or not those two were renewals of leases that were in existence in the name of either A. E. Anderson or A. E. Anderson & Son? A. That is correct.

Q. And were they direct renewals at the expiration of those other leases?

A. That is correct.

Mr. Lewis: We offer these in evidence.

Mr. Angland: What is the date? We will object to offer of proposed Exhibits 30 and 31 by the plaintiff.

The Court: What are they?

Mr. Angland: They are lease of State lands, No. 30, dated February 28, '49, wherein the State of Montana leased to Noel Anderson & Sons; and plaintiff's proposed Exhibit 31, dated February 28, '52, showing [158] that a lease was entered into by

(Testimony of Noel Anderson.)

the State of Montana with Noel Anderson & Sons. They are too remote.

Mr. Lewis: He has testified, if the court please, they were renewals of the written leases.

Mr. Angland: They would have to be renewals of leases with Noel Anderson & Sons to be a renewal, a lease in existence with Noel Anderson & Sons in '45.

Mr. Lewis: May I be permitted to ask another question to clear this up?

The Court: Yes.

Q. Mr. Anderson, prior to the renewal of these leases were the leases they renewed assigned to Noel Anderson & Sons? A. They were.

Q. Were they assigned on March 15th, '47, the same date as these others?

A. On March 15th or thereabouts.

Mr. Angland: We will object to that as being too remote to be material. There was no lease in existence between Noel Anderson & Son in '45.

The Court: Sustain the objection. Proceed.

Mr. Angland: Mr. Lewis, you don't need to identify that.

Mr. Lewis: All right.

Mr. Angland: This is Plaintiff's proposed Exhibit 31 in the matter of the estate of Andrew E. Anderson and we have no objection for whatever value it has. [159]

Mr. Lewis: We offer it in evidence.

The Court: All right, it may be received in evidence.

(Testimony of Noel Anderson.)

Q. (By Mr. Lewis): Mr. Anderson, how long were you a partner of A. E. Anderson & Son?

A. From the year '35 up to and including the year '44.

Q. And during that time was all of the property of A. E. Anderson & Son in the name of A. E. Anderson? A. It was.

Q. And was the bank account in the name of A. E. Anderson? A. It was.

Q. And was a good deal of the business, was or was it not, conducted by A. E. Anderson?

A. It was.

Q. And that was true up to the time of the death of A. E. Anderson? A. That is correct.

Q. Now, when you took your steps to organize Noel Anderson & Sons partnership and after it was organized for the first year or more, did you consult any attorney with reference to any of the details of how it was handled? [160]

A. I consulted you.

Q. Did you or did you not transact a great deal of the business of Noel Anderson & Sons business in the first year of its existence either in the name of A. E. Anderson & Son or Noel Anderson?

A. That is correct.

Q. Well, how did you happen to do that?

A. As far as I was concerned the name was of minor importance to me. There was only one bank account in existence, the account of A. E. Anderson & Son; as far as the name or the name in which the

(Testimony of Noel Anderson.)

business was transacted that was of minor importance to me.

Q. Now, was that the situation in your business relations with the Fay Adams Implement Company? A. That is correct.

Q. During the period immediately after your father's death and on through for, until after the decree of distribution was entered in your father's estate? A. That is correct.

Q. Was that same situation true in your dealings with the Central Service Station in Fort Benton, if you had any? A. It was. [161]

Q. And probably with most of the other firms you dealt with, is that true?

A. That is correct; the name was not important to me.

Q. In your dealings with these various firms during this period '45, was anything very much said to any of them with reference to what name you were doing business under?

A. There was nothing said that I can recall. I didn't advertise the fact.

Mr. Angland: You didn't advertise the fact, is that your answer?

A. That is my answer, yes.

Mr. Angland: I didn't quite hear you.

Mr. Lewis: That is all.

NOEL ANDERSON

Cross-Examination

(Continued)

By Mr. Bowen:

Q. Mr. Anderson, you stated on direct just now that all the property prior to your father's death in December, '43, of the Anderson family was carried in his name, is that a correct statement?

A. That is correct as far as I know. [162]

Q. To refresh your recollection, Mr. Anderson, the inventory and appraisalment of your father's estate fixed as of the date of his death has language in it of referring to an undivided one-half interest in residue real property; how do you explain that? In whose name was the other half interest carried then?

A. The property was still all in my father's name but I claimed a half interest in it.

Mr. Bowen: No further questions.

Mr. Angland: That is all.

Mr. Lewis: That is all.

MAURICE FARRELL

resumed the stand and testified as follows:

Direct Examination

By Mr. Lewis:

Q. Your name, please?

A. Maurice Farrell.

Q. I think you were on the stand yesterday and told what business you were connected with?

(Testimony of Maurice Farrell.)

A. That is right.

Q. I will ask you whether or not your firm of Fay Adams Implement Company did any business with what's termed the old partnership here, A. E. Anderson & Son? A. We did. [163]

Q. And for how long a period was that?

A. Oh, from the time I started working for them until Mr. A. E. Anderson's death.

Q. And was that a rather continuous charge account?

A. It was continuous, business every year.

Q. Now, what occurred then with reference to your dealing with the Anderson family after the death of Mr. A. E. Anderson?

A. Well, the account was just carried on.

Q. Was it continuous, was there continuous account with the Anderson family clear through?

A. That is right.

Q. And was there an account continued on through the year '45? A. Yes.

Q. Do you recall, Mr. Farrell, particularly whether the firm of A. E. Anderson or of Noel Anderson & Sons did business with you then in '45?

Mr. Angland: Just a minute now. Read the question.

(Question read.)

Mr. Angland: We would object to that. The records are the best evidence. We will agree this witness may testify from the records which were here yesterday to which Mr. Lewis objected to. We will

(Testimony of Maurice Farrell.)

be glad to permit him to testify from those [164] records.

The Court: Yes, I think so; a record of those transactions, that would be the best evidence.

Mr. Angland: We will be glad to agree he may testify from these records.

Mr. Lewis: It has been testified here that the account has been continuous, which I think cures the situation that we faced yesterday in the questions direct to Mr. Farrell. And I have a number of checks here which have been marked Plaintiff's Exhibits 15, 16, 17, 18 and 19 and 20, which I will hand to you, Mr. Farrell, and ask you to examine them and see if you recognize them, including the endorsement.

Q. Did those checks all pass through your hands, the hands of your company? A. Yes.

Q. And what were they given for?

A. They were given for merchandise purchased.

Q. And the dates run from May 4th, '46, to July 20th, '46? A. Yes.

Q. And they are all——

Mr. Angland: Just a minute. I am going to object to counsel testifying. If he wants to ask this witness questions, that is one thing, but I object to leading and suggestive questions. I think the counsel is getting into something the court ruled on cross-examination he has to have records to tie it up with '45. [165]

Mr. Lewis: I think not.

(Testimony of Maurice Farrell.)

The Court: This is the same thing you brought up yesterday.

Mr. Lewis: I think it was on the basis I had not tied up the accounts coming on from the old partnership to the new which I have done by two or three witnesses.

Mr. Angland: He is using the records as best evidence for '46 with no records for '45.

The Court: I will sustain the objection.

Mr. Lewis: That is all, you may cross-examine.

MAURICE FARRELL

Cross-Examination

By Mr. Bowen:

Q. Mr. Farrell, since the beginning of this trial and since having first been put on notice you did come on over as a witness, have you familiarized yourself with the Fay Adams records relative to the year '45?

A. Yes, sir, I have looked them up.

Q. Do you recall, did you inquire in whose name business with the Anderson family was transacted in '45 with respect to purchases?

A. Transacted in the name of Noel Anderson.

Q. The records show they were transacted in the name of Noel Anderson?

A. That is right. [166]

Q. You say that your recollection of what the records show indicate that the records show that

(Testimony of Maurice Farrell.)

in '45 you dealt with Noel Anderson, is that correct? A. That is correct.

Q. Turning again then to your recollection of what the records show, do you remember the first year that business was transacted in the name of, after '45, of any of the family members of this alleged partnership other than Noel Anderson?

A. Well, '46.

Q. You have some records that show not until '46 was there transactions with Noel Anderson & Sons? A. That is right.

Q. Would you care to turn to your records and see if your recollection is correct, Mr. Farrell? Our inquiry indicated that it was at some later date that you first began recording on your books business activities with Noel Anderson & Sons? Your first inquiry should be directed to your accounts for '46 to see if as a matter of fact they record any dealings with Noel Anderson & Sons. Just refresh your recollection.

A. This page is shown under the name of Noel Anderson only. [167]

Q. Will you turn then to—take the total record for '46?

A. No, it isn't. The prior record to this are the original slips that these charge and credit accounts are made from.

Q. Then, Mr. Farrell, when do your records, to the best of your recollection, what date do they indicate Noel Anderson & Son first opened an account?

(Testimony of Maurice Farrell.)

A. Well, I will have to look at my slips to show that, to give you the exact date.

Q. Well, could you explain this to the court, why the slips would show one thing and why your ledger account would show another thing as the subsequent years?

A. Well, this book was kept there by a book-keeper, and the name Noel Anderson is merely identification where to put the slips.

Q. But your ledger accounts at a later date, I believe, Mr. Farrell, show the business transactions in the name of Noel Anderson & Son, isn't that right?

A. Yes, it is changed.

Q. And that later date do you recall what the first later date is that you began recording business in your accounts as Noel Anderson & Sons?

A. No, I would have to look through '48, '48 or '49. [168]

Q. Will you check '47, Mr. Farrell? Do you have any entries there recording transactions in the name Noel Anderson & Sons?

A. The account itself is plain Noel Anderson.

Q. Still carried as Noel Anderson in the year '47?

A. On this page, yes, sir.

Q. Will you turn to '48? How was the ledger account for the year '48 carried as reflected by your ledger?

A. The name here is Noel Anderson.

Q. Still Noel Anderson. Will you turn to '49, please, sir? And what does your inquiry show?

A. This shows Noel Anderson & Sons.

Q. And for the first time then in '48 then you

(Testimony of Maurice Farrell.)

began recording the transactions in the name of Noel Anderson & Sons on that ledger account?

Mr. Lewis: That is objected to as not being definite. The question should be directed to those books, it seems to me.

Q. The inquiry of the record, what these books show, not what Mr. Farrell shows, and those books show what?

Mr. Lewis: If the court please, I don't like to object. It is clear here, and this witness testified on cross-examination, that he has other accounts which are the original entries. He has testified these are the ledger accounts. I think when we are [169] referring to ledger accounts the question should be directed to the ledger accounts.

Q. He has suggested you are to be restricted. I would like to know what the ledger accounts show in '49, in whose name is it carried in in '49?

A. Noel Anderson & Sons.

Q. Does it begin January 1st or some time during the year? A. January 4th.

Q. So then that indicates that for the first time you carried the account in the name of Noel Anderson & Sons, beginning January 4, '49, is that correct?

Mr. Lewis: Just a minute. We object to that on the same grounds that it is not definite and it is not directed towards the books the witness has testified from.

The Court: Overrule the objection.

(Testimony of Maurice Farrell.)

A. This is the first time it shows up on these pages as an identification.

Mr. Lewis: Any questions?

Mr. Bowen: No further question, your [170] Honor.

MAURICE FARRELL

Redirect Examination

By Mr. Lewis: .

Q. Mr. Farrell, do you have any other records with you of your transactions with the Anderson family? A. Yes, I do.

Q. And what are those records?

A. Those are the original slips made at the time of the transaction.

Q. Will you please refer to your original slips for '45? State in whose name the slips are?

A. The slips show in the name Noel Anderson.

Q. All the way through?

A. All the way through.

Q. Now, will you please refer to the slips for '46?

Mr. Bowen: Your Honor, again that line of questioning. He has just established by the original slips that in '45 no business was transacted in the name Noel Anderson & Sons. He cannot tie them, according to our discussion of yesterday, the '46 slips to anything that happened in '45 in regard to Noel Anderson & Sons.

Mr. Lewis: If the court please, it is an inquiry

(Testimony of Maurice Farrell.)

for all these years which we have been trying to cover and it has been gone into by the Government. We certainly will have a right to explain those entries. [171]

The Court: Well, we are dealing now with documentary evidence. All of these transactions were conducted with Noel Anderson in '45. Now, if we go into '46 we are dealing with the year '46. There is nothing in the '45 documents here to connect up with '46 because all the transactions were with Noel Anderson.

Mr. Lewis: I don't care to argue with the court, if the court please.

The Court: That is the way it appears to the court.

Mr. Lewis: I want to call the court's attention to this, that the witness testified under examination by the Government's attorney that he had other records here which were the original records of entry. He also testified as to the ledger entries for '46 and '47 and '48 and '49. Now he has the entries here, the original entries the Government has inquired into it, it is tied up now in '45, the next question will tie it up. The partnership has been tied up by reference to the sale of part of the crop in '45 and the transaction coming over into it. Now we are in the position where the Government into the '46 and '47 transactions and I submit we have a right to inquire. [172]

The Court: They inquired as to the first time the firm Noel Anderson & Son appears.

(Testimony of Maurice Farrell.)

Mr. Lewis: That is what I want to inquire.

The Court: The first transaction in his books of Noel Anderson & Sons and that was January 4th, I believe, '49.

Mr. Lewis: If the court please, I am sure that the records will show transactions in '46 in the name Noel Anderson & Sons by the original entries.

The Court: Well, he says——

Mr. Lewis: No, he didn't say; we haven't got to '46 yet.

The Court: Oh, you are talking about '46?

Mr. Lewis: Yes. We first inquired as to '45 and we are going on now following the cross-examination.

The Court: I will sustain the objection; you haven't tied it up.

Mr. Lewis: That is all. [173]

TED RITMAN

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lewis:

Q. Will you state your name?

A. Ted Ritman.

Q. Where do you live, Mr. Ritman?

A. Fort Benton, Montana.

Q. What is your occupation?

A. Ranching.

(Testimony of Ted Ritman.)

Q. Do you have any other official or other position in Chouteau County?

A. Chairman of the Board of County Commissioners.

Q. Of Chouteau County?

A. Of Chouteau County.

Q. Mr. Ritman, where is your farm land, where was your farm land from '35 on?

A. Approximately 7 miles east of the Loma Prairie.

Q. Was it in the vicinity of A. E. Anderson and Noel Anderson land? A. Yes, adjoining.

Q. Where were you living during those years from '35 to '43?

A. Well—'35 on, did you say?

Q. Yes. [174]

A. Well, I was on the home place of my dad's.

Q. The one that joins the Anderson lands?

A. That is right.

Q. And did you live there right along at that period?

A. Well, I believe it was in '38 I went up to Anaconda and worked one summer.

Q. Were you acquainted with the Anderson family in '38 and '39? A. Yes.

Q. How old were the Anderson boys about that time, if you recall?

A. Oh, I wouldn't attempt to say just how old they were. I would have to figure that out. I remember at the time they were both there but just exactly how old they were I wouldn't attempt to say.

(Testimony of Ted Ritman.),

Q. Do you recall whether or not you observed the farming operations of the Anderson's during that period?

A. Well, I have observed it, you might say, all my life.

Q. And clear on up through to the present time?

A. That is right.

Q. Do you know whether or not Noel Anderson, Jr., and Robert M. Anderson did any farm work during that period? A. I do. [175]

Q. When and what was the nature of it?

A. Ever since they were big enough to work they have been working in the field.

Q. Have they? Do you know whether or not they have taken care of the cattle?

A. I know that they have.

Q. And what is the nature of the work there?

A. Feeding and watering in the winter time, building fence in the summer time, riding.

Q. Did it or did it not include branding?

A. Including branding.

Q. Would you say or not that this work these boys were doing was vital work in connection with the work of the operations?

A. Well, it was definitely part of the operations; it was work that had to be done.

Q. Was any of this work having to do with farm machinery, tractors, combines and so forth?

A. Yes. There was very little horse work done since '35.

(Testimony of Ted Ritman.)

Q. And was that work extensive or just casual?

Mr. Angland: Well, just a minute. You make it difficult for the witness and we will object to it as calling for a conclusion of the witness.

The Court: Yes, I think so; make it a little more definite. [176]

Q. Mr. Ritman, is the nature of the work you refer to that the boys were doing in the field?

A. Summer fallowing and seeding, combining.

Q. Does that or does it not involve farm machinery and tractors? A. It definitely does.

Q. And power combines? A. Yes.

Q. Were you away in the '40's any?

A. Yes.

Q. Where? A. In the Army.

Q. When?

A. I was in the Army right at 3½ years. I believe I entered the Army in March 18th, 1942, I believe it was.

Q. And when were you discharged?

A. September 5th, '45.

Q. Did you know of A. E. Anderson's death?

A. Yes.

Q. Did you know anything about the formation of the family partnership between the members of Noel Anderson and his family in '45?

A. Yes.

Q. How soon did you know about that?

A. I believe it was in April of '45. [177]

Q. How did you get that word?

A. News from home.

(Testimony of Ted Ritman.)

Mr. Angland: Just a minute. I will object to that and move to strike the last answer; the witness' statement shows that it was clearly hearsay.

The Court: Yes, I think so.

Q. Mr. Ritman, did you have any business with the Anderson family shortly after you returned in '45 and carrying on the next two years?

A. Yes.

Q. And what was the nature of that business?

A. Well, I bought seed from them. I bought cattle from them. And I have sold them seed and I have sold them both horses and cattle.

Q. Who did you deal with?

A. I dealt with Noel Anderson & Sons; as far as the bill of sale that I gave for the horses and cattle that I gave to them was sold to Noel Anderson & Sons and the checks that I gave for the seed were written the same.

Q. To Noel Anderson & Son?

A. Noel Anderson & Son.

Q. During the period of '46, did you observe the work of Robert Anderson on the farm?

A. Well, just seeing him when he was out in the field. [178]

Q. Was he active in the operations in that year?

A. Up until he went to school.

Q. And he went to school when?

A. I don't remember just when it was but it was in the fall some time, as I recall.

The Court: Well, we will have to suspend here

(Testimony of Ted Ritman.)

and give the Reporter a rest. We will take a recess for fifteen minutes. (11:15 a.m.)

(Court resumed, pursuant to recess, at 11:30 o'clock a.m., at which time all counsel and parties were present.)

The Court: Proceed.

TED RITMAN

resumed the stand and testified as follows:

Direct Examination

(Continued)

By Mr. Lewis:

Q. In what year was that you were referring to, Mr. Ritman, '47?

A. I believe the question was asked for '46, wasn't it?

Q. '46, all right. Now, did you have opportunity to observe the operations of the farming operations of the Noel Anderson family during '47?

A. Yes. [179]

Q. And also Robert Anderson; was he there?

A. Part of the time.

Q. Was he there in the summer? A. Yes.

Q. Do you know the extent of his work?

A. Just the work that had to be done. I couldn't begin to name it all. The summer fallowing, duck footing, but summer fallowing is the main job during the summer.

Q. How about the harvest?

(Testimony of Ted Ritman.)

A. He took part in the harvest.

Q. How about the seeding?

A. Until he went to school. I don't remember whether he finished seeding before he went to school or not.

Q. What about '48? Do you know whether or not he entered the military service some time after '47?

A. I remember his going to the service but I don't recall just when it was.

Q. You recall he was there in '48, do you?

A. If he hadn't gone into the service, I am sure he was there, but when he went into the service I wouldn't say.

Q. Now, as to Noel J. Anderson, did you see Noel J. Anderson there in '46? A. Yes.

Q. How much of the time?

A. All the time. [180]

Q. He returned to the service when about?

A. He returned around the first of the year, as I remember.

Q. And was he there during all the time of '46?

A. I would say from the time spring work started.

Q. And do you know whether he performed services during that period and what they were?

A. Yes, he did the field work and mechanical work or anything that had to be done around the place.

Q. What do you mean by mechanical work?

(Testimony of Ted Ritman.)

A. Repairing tractor or anything or piece of machinery that should need repairs.

Q. What have you to say as to whether the operations of the Anderson family were conducted on a large scale or a smaller one?

A. I would say on a large scale.

Q. And what type of machinery, if you know, did they have?

A. They had rubber tired wheel tractors. If that is what you want.

Q. Yes. A. They had track tractors.

Q. And later they had both kinds of tractors?

A. Yes, as far as I can remember Mr. Anderson, dating back to the old three-wheel cats, they had a cat tractor and sometimes two of them. [181]

Q. Would you say it takes someone with skill to keep those pieces of machinery in operation?

A. Yes, it does.

Q. And do you know whether or not these two boys have that skill? A. Yes, they have.

Q. And have they used it, do you know?

A. Have they used what?

Q. Their skill in the operation? A. Yes.

Q. Mr. Ritman, did you have occasion to talk with Noel J. Anderson at any time during the year '46? A. Yes.

Q. Do you know what the subject of that conversation was?

A. The subject of that conversation was in regard to a partnership because I was going into a fifty-fifty proposition with my dad and I didn't

(Testimony of Ted Ritman.)

know all the ins and outs of it, so learned from him through our discussion something to base on the partnership deal.

Q. Do you know what the terms of the partnership of the Anderson family was? A. Yes.

Q. You have heard the testimony of Mr. Anderson here yesterday as to the details of the formation of a partnership? A. Yes. [182]

Q. Was that or was it not in general what you learned from Noel J. Anderson?

A. It was the same.

Q. And do you remember when the partnership began? A. Yes.

Q. When?

Mr. Angland: Just a minute. We will object to that. This is a conversation this witness is testifying about he had in '46 and doesn't tend to prove the existence of a partnership during the year '45. It is a self-serving declaration as well that he is apparently going to relate as having been made to him by Noel J. Anderson. Objected to as incompetent, irrelevant and immaterial.

The Court: Yes, I rather think it is.

Q. Mr. Ritman, directing your attention back to the business transactions you related that you had with Noel Anderson & Sons, when was your last transaction?

A. The last transaction was last fall. I bought some wheat from them.

Q. And how did you pay for it, if you paid for it? A. I paid them a check.

(Testimony of Ted Ritman.)

Q. And who was the check made to?

A. Noel Anderson & Sons. [183]

Q. Do you know whether or not during the period that you were acquainted with the old partnership, A. E. Anderson & Son, whether Agnes Anderson, the wife of Noel Anderson, did any work of any kind that might be connected with the operation of the farm and ranch?

A. A good share of it did; she did the cooking there at the ranch.

Q. For whom?

A. For everyone that was working there.

Q. And what have you to say whether there was any hired man outside of the family?

A. Yes, there was. I was one of them occasionally.

Q. And were there others? A. Yes.

Q. Over how long a time?

A. I would say they had a hired man all the time during the summertime.

Q. And you know that Agnes Anderson did the cooking for those hired men that were there at that time? A. A good lot of the time, yes.

Q. Of course, your being in the service in '45, you can't say as to the summer of '45, can you?

A. No.

Q. Do you have any remembrances about any other years?

A. Well, dating back as far as '34, '35 I worked there, during the summer I worked there in harvest three years straight hand running and I am certain

(Testimony of Ted Ritman.)

she [184] did the cooking and two harvests, and I think her sister-in-law helped her the third year that I was there.

Q. Now, do you know of any other work that she did? A. That she did?

Q. Yes. A. Outside of the cooking?

Q. Yes.

A. Yes, I know that she helped with the haying, and, well, helped around in harvest time in case of emergency.

Q. Do you know what she did in the haying operation?

A. Well, going after repairs, for instance, or, well, moving trucks around or pulling hay up on the stack.

Q. She actually worked in the field?

A. That is right.

Q. Now, when was that, as close as you can tell?

A. I couldn't say definitely. It was in the early '40's, sometime along in the '40's. I wouldn't say just what year it is; I couldn't tell you.

Q. Did you observe any after you returned from the Army? A. Her helping?

Q. Yes. A. Yes. [185]

Q. When was that?

A. She never did miss a branding. She always helped do cooking. When they were branding and moving cattle she brought up our lunches. Then any other thing where they needed a little extra help right on the spot.

(Testimony of Ted Ritman.)

Q. Like driving a car to town?

A. Moving an extra vehicle or something like that.

Q. And in this taking of lunches what would be that transaction?

A. Well she would have to catch up with us wherever we were at.

Q. On the road? A. That is right.

Q. When you were trailing cattle, you mean?

A. That is right.

Mr. Lewis: That is all.

TED RITMAN

Cross-Examination

By Mr. Bowen:

Q. Mr. Ritman, as a farmer in this area, wheat farmer, could you give me a narrative statement of something of the busy season in preparing the ground for winter wheat. I believe you refer to fallowing it [186] during the summer and early fall operations to lay it back, is that about right, or how would you describe the farming operations?

A. Well, a lot depends on the weather conditions of the summer. If there is plenty of moisture, lots of rain, why you are busy right from the time you start until after the first of September, and so as far as keeping the weeds down on your summer fallowing occasionally like this year it so happens there wasn't very much moisture and the weeds didn't grow so it was more or less a slack time.

(Testimony of Ted Ritman.)

Q. Do you mean by that you are sort of laying it back by early fall?

A. I don't know what you mean by laying it back, but the operations more or less start sometime after the first of April and there is very little field work done after the 1st or 15th of October. Some farmers will go out and rip up stubble lands; it may be the 15th of October maybe but it is not a common practice after the 15th of October.

Q. You stated you entered the Army March 1st, 1942, and were discharged September 5, 1945, where were you discharged, Mr. Ritman?

A. I got my discharge papers in Salt Lake [187] City.

Q. Did you come directly home? A. Yes.

Q. You were home then in early September, '45?

A. Yes, sir.

Q. At that time your crop or rather your family crop as far as farming operations was probably complete?

A. For the summer for the year of '45.

Q. Yes. A. No.

Q. Did you immediately then chip in with what was yet to be done in '45?

A. I wouldn't say I devoted all my time out there to my dad's place; I was out there but I didn't devote all my time out there.

Q. What were you doing the rest of the time?

A. Well why we lived in town and my wife was living in town and that is where I stayed when I

(Testimony of Ted Ritman.)

wasn't out at the ranch. I would say I was out there about half of the time.

Q. Were you engaged in another occupation here in town or other business?

A. No. I just got back from the Army.

Q. You were sort of taking it easy after you got home?

A. If you want to put it that way, yes. [188]

Q. I believe you stated on direct, Mr. Ritman, something about business transactions after your returning from the service with Noel Anderson & Sons, is that correct?

A. That I have had business dealings with them.

Q. After you returned from the Army in September, '45?

A. I didn't say that I had dealings with them in September, '45, I don't believe.

Q. When was your first dealing?

A. I couldn't tell you offhand to save me.

Q. Do you recall any specific dealings in '45 at any time?

A. No, I can't recall any particular thing, no.

Q. You noted, Mr. Ritman, that from '35 to '37, three seasons that you worked as a straight hand on the Anderson farm, is that right?

A. No, I wouldn't say a straight hand. What do you mean by straight hand?

Q. I thought that was an expression you used. You say you worked there then?

A. Part time.

(Testimony of Ted Ritman.)

Q. And in two of the years Mrs. Anderson cooked for the men?

A. I believe that is right. I have worked there several years as far as that is concerned and I know that in the years that I have worked for Andersons she [189] has cooked more than two years that I have worked there but what years they were I wouldn't attempt to say, to give any dates, but I know it is more than two years; that don't get the impression that I mean she only cooked two years because that is not so.

Q. All I want to do is get from you your best recollection. I am not trying to put words in your mouth. Then obviously because you went into the service in March of '42, your knowledge of any cooking activities by her would have to relate back to prior to that time, isn't that correct?

A. Over any great period of time, yes.

Mr. Bowen: No further questions, your Honor.

TED RITMAN

Redirect Examination

By Mr. Lewis:

Q. Mr. Ritman, you testified, I believe, that the farming operations quite often go into as late as October 15th of the year. Now what have you to say about when normally, if you know, the Andersons finished their seeding?

A. I would say one year with another probably

(Testimony of Ted Ritman.)

they will be through probably the 20th of [190] September.

Q. And do you know whether or not that is before the school term starts in the colleges in Montana?

A. I would say that is before the college term starts, quarter starts.

Mr. Lewis: That is all.

TED RITMAN

Recross-Examination

By Mr. Bowen:

Q. Mr. Ritman, you say you would say that was before; you have no specific knowledge of when the school term starts?

A. I never went to college.

Mr. Bowen: No further questions.

AGNES ANDERSON

Direct Examination

By Mr. Lewis:

Q. Will you state your name, please?

A. Agnes Anderson.

Q. What relation are you to the plaintiff in this action? A. His wife. [191]

Q. And when were you married?

A. July 1st, '25.

Q. And where do you reside?

A. At present?

Q. Yes. A. In Fort Benton.

(Testimony of Agnes Anderson.)

Q. How long have you lived there?

A. Since '38 except for the summer months.

Q. And where do you live in the summer months? A. At the ranch.

Q. And is that the ranch that is involved in this matter? A. It is.

Q. In Chouteau County?

A. In Chouteau County.

Q. And Mrs. Anderson, where did you live before you and the plaintiff were married?

A. Well I lived in that community since '17.

Q. Since '17? A. That is right.

Q. And I suppose the first you know about the farming operations of your husband would be when you were married in '25?

A. That is right. [192]

Q. Now do you know what the extent of those farming operations were at that time, just in a general way? A. Well, yes.

Q. Well, what was it?

A. Just about the same as we do now, not as extensively.

Q. Dry land farming?

A. Dry land farming.

Q. And cattle? A. Yes, a few.

Q. Not as extensively as now? A. No.

Q. Now was there anyone else there on the farm at the time?

A. Noel's mother, father and his sister.

Q. And about how long—did you know about

(Testimony of Agnes Anderson.)

the partnership relations between your husband and his father? A. Yes.

Q. And about how long did that exist?

A. Well, I couldn't tell you the exact years of it.

Q. For a number of years prior to Mr. A. E. Anderson's death? A. Yes. [193]

Q. As many as 8 years? A. Probably.

Q. Were you acquainted with any of the business of the partnership of A. E. Anderson & Son?

A. How do you mean?

Q. Well did you do any work on the accounts or anything of that kind?

A. Well, I used to help Mr. Anderson, Sr., with the accounts and kept the time book for the hired man and things like that.

Q. What is the extent of the hired man, was it in those days of the earlier partnership and later?

A. Well we used to have from 1 to 12 or 13 men in the earlier days during harvest time; we had an awful crew around.

Q. And who did the cooking for those crews?

A. I have cooked every year since I have been married until, well, since '45; and I have been out every year during harvest and during branding.

Q. Since then, too? A. Since then, too.

Q. During the years of the first partnership, A. E. Anderson & Son, did you do any other farm work or outside work in connection with the farming operations?

A. If the occasion demanded it, yes. [194]

(Testimony of Agnes Anderson.)

Q. And would you state what the nature of that work was?

A. Well I helped them during haying on occasion and always during branding, and I have helped with the milking and chores around the place.

Q. What was the nature of your work in the haying operations?

A. I run the pickup to stack the hay, to pull the stacker.

Q. To pull the stacker? A. Yes.

Q. And did you work at that a full day?

A. Yes, sir, right with the men.

Q. Day after day? A. Yes.

Q. And would you be able to say what times as close as you could as to when that was?

A. What year that was?

Q. Yes.

A. Well, it was before Mr. Anderson's death.

Q. Probably how many years?

A. '42 on; I couldn't tell you definitely.

Q. Probably two years? A. Probably.

Q. Now what other work outside have you done in connection with the partnership, the old partnership? [195]

A. I have hauled wheat during harvest. I have driven the truck to spread grasshopper poison, and helped them bale out straw and any odd job where they needed someone to drive a truck and men were not available.

Q. During this period were there times when labor was scarce? A. Very.

(Testimony of Agnes Anderson.)

Q. And was there any time, state if you know, if there was any time when you were working shorthanded? A. Well, yes.

Q. And during such times what was the nature of your work compared to any other time?

A. Any time they were shorthanded I did the work in the house and always ready to go when they said to go here or here, and I had to stop whatever I was doing in the house and run those errands and help them.

Q. And did you do that? A. I did.

Q. Well, Mrs. Anderson, did you during those years, did you have a checking account with your husband?

A. We have had a joint account, yes.

Q. Do you remember when it was started?

A. Well, I believe about '42. [196]

Q. About the year '42?

A. I believe. I wouldn't swear to it.

Q. And can you state whether or not that account has been continuous? A. Yes, it has.

Q. Now, do you know where the money came from that was deposited in that account through those years '42 up to the year '45?

A. Well, from the partnership earnings.

Q. From A. E. Anderson & Sons? A. Yes.

Q. Your husband shared in that partnership?

A. That is right.

Q. And during that period have you owned an undivided half interest in that account at all times?

A. That is right.

(Testimony of Agnes Anderson.)

Q. And do you have authority to write checks on that account? A. Yes, sir.

Q. During what period? A. All the time.

Q. From the time it was opened? A. Yes.

Q. And up to the present time? A. Yes.

Q. Has that actually been continuous from the time it was opened to the present time?

A. Yes. [197]

Q. A joint account of you and your husband?

A. Yes.

Q. Mrs. Anderson, do you know of the business situation so far as at the time of your father-in-law's death something about the business affairs of the partnership?

A. That it was a fifty-fifty partnership, yes.

Q. Between?

A. Between my husband and his father.

Q. Between your husband and his father?

A. Yes.

Q. Now, when did he die?

A. Christmas Eve, '43.

Q. '43? A. '43.

Q. Now, do you know what occurred in the handling of the business affairs of the farming operations during the year '44?

A. Well, the farming operations had to be carried on.

Q. And were they carried on as the old partnership? A. I believe so.

Q. In '44? A. Yes. [198]

Q. And after Mr. Anderson's death do you recall

(Testimony of Agnes Anderson.)

any time that you and your husband discussed business affairs as to what your future was to be?

A. Yes.

Q. When was it?

A. Well, it was during the time that the estate was being settled. I couldn't say just exactly when.

Q. Was anything said in any of those discussions about forming of the new partnership that would include members of your family?

A. It was.

Q. Well, now could you say when that occurred or what year it occurred in? A. In '44.

Q. During '44? A. '44.

Q. And who did you discuss that matter with?

A. My husband and I discussed it.

Q. I didn't get that?

A. My husband and I discussed it.

Q. And did you come to any conclusion at all as to what you intended to do?

A. Yes, that we would have a partnership with the boys, with the two older boys.

Q. And that was before you had talked to them about it? [199]

A. Well, we discussed it. Well, no, we didn't discuss it together because they weren't there.

Q. Your first discussion was with your husband?

A. Yes.

Q. Do you know how early in '44 that may have been? A. No.

Q. Was there any particular time in '44 when

(Testimony of Agnes Anderson.)

you discussed the matter with one of the boys and your husband? That would be the year following?

A. And Bob was in school?

Q. Yes.

A. Christmas, he was home during Christmas vacation.

Q. In '44? A. In '44.

Q. Do you recall the incident of that conversation and conference?

A. We told him that we would—now, let's see. That a partnership would be formed with my husband any myself each to share one-third and the two boys to share one-third or one-sixth each.

Q. And you mean by the two boys, Robert and Noel, Jr.?

A. Yes.

Q. Noel J. wasn't it? A. Yes. [200]

Q. He was in the service? A. Yes.

Q. In the military service? A. Yes.

Q. Now, Mrs. Anderson, about when did that conversation and conference occur?

A. About when?

Q. Yes.

A. Well, the latter part of December, I imagine. I don't remember just exactly when Christmas vacation started.

Q. But it was during Christmas vacation when Robert was home from college, is that it?

A. Yes.

Q. Now did the conference reach a stage where there was any agreement as to what should be done?

A. Yes, I think so.

(Testimony of Agnes Anderson.)

Q. That is right? A. Yes.

Q. Was there any time set when that partnership was to begin? A. The first of January.

Q. Of what year? A. Of '45.

Q. Well, did it begin then? What happened after that? [201]

A. Well, yes, it started then. Our accounts were charged Noel Anderson & Sons; I mean our partnership started then.

Q. Your partnership started in '45?

A. Yes.

Q. And do you know, Mrs. Anderson, what work Robert did, if any, during the year '45?

A. During '45?

Q. Yes.

A. Well, he worked, he came home to help with branding in the spring.

Q. Before school was out?

A. Yes, that would be in May.

Q. Did you help with branding at the same time?

A. Yes. And then when school was out he was home to do summer fallowing and any field work that was to be done.

Q. And did he do it? A. He did.

Q. For over what period?

A. Until he went back to school in the fall.

Q. Of '45? A. Of '45. [202]

Q. State whether or not your son Noel J. Anderson was home at any time during '45?

A. He was home in January of '45, wasn't he?

Q. Were you present at any conversation held

(Testimony of Agnes Anderson.)

between Noel J. Anderson and your husband when Noel was home on furlough? A. Yes.

Q. Did you hear what occurred?

A. We, or Mr. Anderson told Noel Junior about the partnership that we were forming or had formed and that he was to have one-sixth interest.

Q. That he was to have one-sixth partnership in it? A. Yes.

Q. You heard that conversation?

A. I heard that conversation.

Q. Did you hear what Noel Junior's answer was?

A. He said: "That is okay."

Q. About when was that?

A. Well, it was when he was on home delay en route; it was not really a furlough; it was delay en route on his way overseas. The exact date I couldn't tell you.

Q. Early in January? A. I think so.

Q. Mrs. Anderson, did you do any field work or outside work in connection with the farming operations during '45? [203]

A. Yes, I hauled wheat.

Q. And what were they?

A. I hauled wheat.

Q. With a truck?

A. I hauled to town when we wanted wheat to go to the elevator in town. I hauled wheat.

Q. That would be to Loma? A. Loma.

Q. How far is that?

A. 9 miles across the ferry.

Q. Across the ferry.

(Testimony of Agnes Anderson.)

A. Across the ferry.

Q. On what river? A. Missouri River.

Q. And was that work just an occasional load or was it regular in the harvest?

A. Regularly while we hauled wheat to the elevator; when the elevators were filled we binned it at the ranch. Hauling it on the ranch for storage was a different proposition than hauling it to town.

Q. That on occasions would go on the full harvest season or not? A. Yes.

Q. Have you taken part in conferences with reference to the partnership with other members of the family at any time since its formation?

A. Yes. [204]

Q. And what was said or done in that conference?

Mr. Angland: Just a minute. I think we should have some definite place or time of these conferences.

Q. Can you recall the place where, anyone that you have in mind now? A. Well, in the house.

Q. At your home? A. At our home, yes.

Q. And who would be present if you recall definitely?

A. Well, I believe on occasions, I couldn't say just definitely.

Q. Do you recall the year?

A. Do I recall the year?

Q. Yes.

A. Well, '45 was when we were.

(Testimony of Agnes Anderson.)

Q. When you talked over partnership matters?

A. When we formed the partnership, '44 and '45. '44 we were talking about it and '45 we did it.

Q. Were you familiar with the books of the partnership? A. Yes.

Q. The new partnership? A. Yes, I am.

Q. Have you worked on them and know what some of the items are? [205]

A. I have made entries on them on occasion; most of the time Noel does it.

The Court: I think you better suspend here. We will take a recess until two o'clock this afternoon.

(12:15 o'clock p.m. 12/12/52.)

(Court resumed, pursuant to recess, at 2:00 o'clock p.m., at which time all counsel and parties were present.)

AGNES ANDERSON

resumed the stand and testified as follows:

Direct Examination

(Continued)

By Mr. Lewis:

Q. Mrs. Anderson, do you have authority to write checks on the Noel Anderson & Sons account?

A. I have.

Mr. Lewis: If the Court please, at this time to shorten matters up there is a stipulation which we have agreed to in this case with reference to the time of opening the various accounts and as to who

(Testimony of Agnes Anderson.)

had the right to sign and we would like to have them introduced and made a part of the record.

The Court: Very well.

Mr. Lewis: I am not sure of the practice. Is it the practice to have stipulations of that sort marked as an exhibit? [206]

The Court: Yes, certainly.

Mr. Lewis: Then I think it should be marked as an exhibit and will the record show the number that the clerk would give it. (38).

Q. Mrs. Anderson, have you written any checks on the partnership funds for business expenses during the time since the formation of the partnership? A. I have.

Q. I hand you Plaintiff's Exhibit No. 39 and ask you if you recognize the signature?

A. That is my signature.

Q. Is that your signature? A. Yes.

Q. And when was it given?

A. This date is August 2nd, '46.

Q. And do you know for what it was given?

A. It is written to Ragland Grocery and it is for our account at the ranch.

Q. The ranch account?

A. The ranch account.

Q. And it has nothing to do with your personal account? A. No, it hasn't.

Mr. Angland: We will have to renew the objection we have heretofore made; that again is a mater of '46. The stipulation now made a part of the [207] record shows that there was no account

(Testimony of Agnes Anderson.)

opened for Noel Anderson & Sons until April 30th, '46, and that is in August, '46.

The Court: Is it the same check we had before?

Mr. Angland: It is the same concern and we haven't any transactions with that concern yet in evidence showing that Noel Anderson & Sons did business with that concern in '46 or '45.

The Court: I will sustain the objection.

Q. Mrs. Anderson, are you familiar with the books of the partnership of Noel Anderson & Sons?

A. In a general way, yes.

Q. And the way the accounts are kept?

A. Yes.

Q. I hand you Plaintiff's Exhibit 9 and ask you to refer particularly to page 2, Plaintiff's Exhibit 9-a, and pages 27 to 34, inclusive, Plaintiff's Exhibits 9-b, c, d, and e, and I will ask you if you know whether or not those entries on those pages are entries of receipts and expenditures of the account Noel Anderson & Sons for the year '45?

Mr. Angland: To which we object, your Honor.

Mr. Lewis: I am just asking whether she knows.

Mr. Angland: Well, we will object to it; the record speaks for itself; the record is in [208] evidence.

The Court: These books are all in evidence, aren't they?

Mr. Angland: Yes, that is my understanding. They have been introduced, haven't they, Mr. Lewis?

Mr. Lewis: I was going to look into the ques-

(Testimony of Agnes Anderson.)

tion whether this part has been introduced and I want to know whether this has been introduced.

The Clerk: Exhibits 9, a, b, c, d, and e have all been admitted.

Mr. Lewis: They were admitted, if the Court please.

Q. (By Mr. Lewis): Now, Mrs. Anderson, I hand you Plaintiff's Exhibit No. 12 and ask you to turn to pages 62, 60 and 62. Are you familiar with Plaintiff's Exhibit No. 12? A. Yes.

Q. Do you know whether or not page 60 of that exhibit contains all of the charges against Noel J. Anderson, all of his credits for earnings in the partnership down to the beginning of '51?

A. I believe it does.

Q. Now if you will turn to page 62. Do you know whether or not page 62 contains all of the charges which included withdrawals by Robert M. Anderson from the partnership of Noel Anderson & Sons, and whether it contains the credits for the earnings of that partnership from the time it began in January 1st, '45, to the beginning of '51? [209]

A. I believe it does.

Q. Now, will you turn to page 58 of Plaintiff's Exhibit 12. Are you familiar with the entries made on that page, Mrs. Anderson?

A. In a general way, yes.

Q. Now are those the—what do those entries represent?

A. The partnership earnings and the charges against the account.

(Testimony of Agnes Anderson.)

Q. Against whose account?

A. Against Noel and Agnes.

Q. Then it includes your earnings which have been credited for your share of the earnings in the partnership and it includes all of your withdrawals which are charged to you, the withdrawals of you and your husband, Noel Anderson, from the beginning of the partnership in '45 to the beginning of the year '51? A. That is right.

Q. Mrs. Anderson, I call your attention to one or two items, for instance, August 15th, bonds, and there is another item for June 10th, bonds, and one or two others for bonds; do you know what those items are?

A. Government bonds that were purchased.

Q. Out of the earnings, your share of the earnings, yours and your husband's from the partnership? A. From the partnership. [210]

Q. Now, do you know, those bonds, whose name they are in? A. Mr. husband's and my name.

Mr. Lewis: You may take the witness.

AGNES ANDERSON

Cross-Examination

By Mr. Bowen:

Q. It was established on direct, Mrs. Anderson, that beginning in '38 you left the ranch and moved into town, is that correct?

A. For the school years, yes; school months, I mean.

(Testimony of Agnes Anderson.)

Q. You have heard the testimony of your husband, Mr. Anderson, yesterday and today; do you recall his testimony that when you left the ranch in '38 a hired man and his wife was then hired? Do you recall that? Is that true?

A. We had a man and his wife on the ranch, yes.

Q. Did they live at the ranch house?

A. Yes.

Q. They sort of maintained the ranch house?

A. In one of the houses, yes. [211]

Q. Mrs. Anderson, Mr. Anderson testified that the wife of the ranch hand beginning in '38 helped with the cooking, is that your recollection?

A. Yes.

Q. Helped with the cooking there at the ranch for the hired hands? A. Yes.

Q. I presume she continued that during the harvest season at which time you had the bulk of your hired hands?

A. I was there during the harvest season.

Q. She aided you in cooking? A. In '38?

Q. In '45?

A. In '45? In '45 there was a different couple at the ranch in '45 than there was in '38.

Q. There was? A. Yes, sir.

Q. Then this second man and his wife, she assumed the responsibility of at least in part in cooking for the hired help at the ranch?

A. She did part of the cooking.

Q. What was left for you to do in the way of cooking?

A. I did the general supervising. I told them

(Testimony of Agnes Anderson.)

what to cook and what to save. You can't let hired help come in and take full charge of running a household; you have to have a little restraint on them. [212]

Q. You mentioned, Mrs. Anderson, hauling wheat during the harvest season in '45?

A. Yes.

Q. How long was that season, do you recall?

A. I don't remember. It depends on how much rain we had during harvest. I couldn't tell you the exact number of days.

Q. Be three days?

A. Not three days in harvesting operations. Well, say about 10 days.

Q. Now I am referring to your hauling operation as part of the harvest operations?

A. I don't remember.

Q. You couldn't give us a rough figure to the best of your knowledge, three days, one week?

A. I don't remember.

Q. Mrs. Anderson, with your knowledge of ranch work and your acquaintance with ranch families in this area do you feel that you did more in the year '45 than any other well wife, able-bodied wife might do in the way of helping on ranch operations?

Mr. Lewis: That is objected to as calling for a conclusion of the witness.

The Court: Well, I think so; sustain the objection. [213]

Q. You refer, Mrs. Anderson, to the joint bank

(Testimony of Agnes Anderson.)

account of you and your husband and that you drew checks on that account, is that correct?

A. That is right.

Q. Did you draw checks on the account in '45 to your knowledge?

A. In '45?

Q. Yes, ma'am.

A. I must have.

Q. What do you usually, what purpose would you have when you drew checks on the joint account; what would you use the money for?

A. I can draw a check on the joint account for anything I wish.

Q. Yes, ma'am, I realize that, but what was your purpose for which you did draw checks?

A. Any necessary expenses or anything else.

Q. Would you say that Mr. Anderson drew the majority of the checks or that you drew just a few, would that be a fair statement?

A. I don't think so.

Q. What proportion of the checks drawn on that account would you say you drew?

A. It varies; I wouldn't know. [214]

Q. Do you recall a meeting between Mr. Henoland, Internal Revenue Agent and Bureau of Internal Revenue and you and Mr. Anderson had at your ranch or probably your Fort Benton home in the fall of '51?

A. I remember it.

Q. You remember meeting Mr. Henoland at that time?

A. Yes.

Q. You served him coffee at the time?

A. Yes.

Q. Do you recall a statement at that time that

(Testimony of Agnes Anderson.)

Mr. Anderson drew the great bulk of the checks on your joint account and that only in emergency did you draw checks?

A. From our joint account?

Q. Yes, ma'am, that is right, being the only account that you could draw on in '45?

A. I don't remember such a statement.

Q. Would that be a fair statement of the proportion of checks you did draw?

A. On our personal bank account?

Q. Yes, ma'am. The stipulation shows that in '45 the only bank account you could draw against was the joint account of you, that you and your husband had with the Choteau County Bank? [215]

A. I don't know that I have ever been restrained to emergency to sign a check on our joint account.

Q. I am not suggesting that you were restricted in the drawing of checks on your account but I am referring now to the practice. Of course, you could draw a check on your account any time you wished because the bank had your name, your signature card, but as a matter of practice wasn't it true it was seldom that you drew a check on the joint bank account, recognizing, of course, that you had the right to do it at any time you wished?

A. I think that I could draw checks on our joint account any time.

Q. Did you?

A. It didn't matter whether Mr. Anderson wrote the check or whether I wrote the check.

Q. You referred to purchase of bonds in '45,

(Testimony of Agnes Anderson.)

Mrs. Anderson. Would you explain a little more in detail about the purchase of these bonds? You did purchase bonds in '45, didn't you?

A. I don't remember the date.

Q. Did you purchase any bonds in '45?

Mr. Lewis: The record doesn't show that.

Q. Did you purchase any bonds out of this joint account in '45?

A. I can't say definitely, but I believe—I couldn't say definitely. [216]

Mr. Lewis: If the Court please, I believe she has a right to refer to the record. He directed her attention to particular items in the record.

The Court: All right, let her read the record.

A. In '45 the record does not show.

Q. Anything about the purchase? A. No.

Q. I don't recall that it was established on direct, Mrs. Anderson, what checks were drawn for when you drew checks on the joint account. Do you recall what you did draw a check for, recognizing, of course, that you had the full right to draw checks, on the joint account?

A. On our personal account?

Q. That being the only one you could draw against in '45?

A. As I said before, any expenses or——

Q. Expenses, would that be family expenses?

A. Family expenses for our personal account is our own personal operations.

Mr. Bowen: No further questions, your Honor.

AGNES ANDERSON

Redirect Examination

By Mr. Lewis:

Q. Mrs. Anderson, directing your attention back to the manual work on the farm, particularly in '45 with reference to the cooking when you had help there, did you or did you not also do part of the cooking? A. I did.

Mr. Lewis: That is all.

The Court: Call your next witness.

NOEL J. ANDERSON

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lewis:

Q. Will you state your name, please?

A. Noel J. Anderson.

Q. What relation, if any, are you to the plaintiff in this case? A. I am a son.

Q. And where do you live, Mr. Anderson?

A. I live on a ranch east of Fort Benton.

Q. Is that ranch the ranch that is involved in this partnership involved here? A. Yes. [218]

Q. How long have you lived there?

A. All my life.

Q. Were you there then during the time of the partnership of your grandfather and your father?

A. I was.

(Testimony of Noel J. Anderson.)

Q. And at that time did you do any work during any of that period on the farm?

A. I have done work on the farm all the time that I was able to whenever I was big enough.

Q. And when did you start out, how old were you when you started?

A. I did a little all of the time from the time I started there; in '38 I started on the heavier work.

Q. '38, from that time on will you state what the nature of your work was on the farm?

A. Well, we drove tractor, mowing hay, and helped in other ways, putting up hay, during harvest drove the truck, hauled the wheat, helped in moving cattle, helped with branding, and helped a little with fencing.

Q. Was any of that work in those years work that required skill, either in farming operation or cattle raising operation?

A. Well, not technical skill, no. [219]

Q. How long were you working at that?

A. You mean how long?

Q. Did you work at that type of work you are mentioning now, every year up until the time of your grandfather's death?

A. Yes, up to the present day.

Q. And did you work on the farm during the year '44? A. I did.

Q. Now in the years along at that time what was the nature of your work so far as the type of machinery that you handled?

A. You mean up until '44?

(Testimony of Noel J. Anderson.)

Q. Yes.

A. Well, starting with '42, I believe we were driving tractor in the field with the summer fallowing along with what we had been doing before.

Q. Did you do any work at harvesting?

A. We always helped at harvest.

Q. What did you do?

A. Well, even before '38 we were helping on the combine, dumping straw and things like that, and '38 on we were driving trucks usually or helping at the granary, and from '42 or '43, I don't remember which, I drove tractor on the combine. [220]

Q. And combine?

A. On the combine, pulling combine.

Q. In the course of your work did you ever have any breakdowns with the machinery?

A. Yes, a few.

Q. What happened then when you had a breakdown? A. Fixed it and went on.

Q. You fixed it? A. Yes.

Q. How much experience have you had in that line of mechanic work?

A. Well, ever since '41 I have either helped or done all of the overhauling of the machinery on the farm.

Q. You mean yearly overhauling; that would include complete overhauling of a tractor, for instance? A. Yes, sir.

Q. Could you do that yourself?

A. I have helped with it since '41, and since '46

(Testimony of Noel J. Anderson.)

probably, I was in the Army in '45, but since '46 I have done most of it myself.

Q. And during that period do you know whether or not it was necessary for the partnership to hire any experts to keep the machinery in repair? [221]

A. There has been some work hired that was a little too heavy for the equipment that we had at the ranch to handle, so that it was brought up here to Great Falls or to Fort Benton to be overhauled.

Q. Outside of that state whether or not you have taken care of the repairing? A. I have.

Q. In all the years except when you were in the Army? A. Yes, sir.

Q. Now, Mr. Anderson, when did you enter the military service? A. September 19th, '44.

Q. Prior to that time did you do any work in the summer of '44 in preparation for the '45 crop?

A. The majority of my time the summer of '44 was spent in summer fallowing and preparing for the '45 crop and harvesting '44 crop.

Q. Did you have anything to do with the seeding of the crop in '44 for '45? A. I did.

Q. How much of it did you do?

A. I would say that I did half of it.

Q. About half of it? A. Yes. [222]

Q. And in acreage what would that be?

A. It was around 1100 acres in '44, I believe.

Q. Total? A. Yes.

Q. Who helped? A. My brother.

Q. Robert M. Anderson? A. Yes.

(Testimony of Noel J. Anderson.)

Q. What have you to say about the amount of work that he did that summer?

A. He and I worked together on the summer fallowing and everything.

Q. Explain to the Court what would happen, what you would be doing while your brother was doing something else?

A. Well, there's fencing and other work to be done, and if one was fencing why another would be summer fallowing.

Q. How much of your time and your brother's time was spent during the working season of '44 in either the preparation of the ground and seeding the crop for '45 or anything for the '44 crop, how much of yours and your brother's time?

A. Well, part of the time was spent with the cattle and on fencing, our entire time was spent at the ranch working looking after—— [223]

Q. Either in the farming operations or the cattle? A. That is right.

Q. Where did you go when you entered the service, Mr. Anderson?

A. I went to Fort Douglas, Utah, where I was sworn in and then to Camp Hood, Texas.

Q. Were you home any time after you entered the service?

A. I was home on delay enroute to Fort Ord, California, some time after the 15th of January.

Q. Of 19—— A. '45.

Q. '45 or '46? A. '45.

Q. '45? A. Yes.

(Testimony of Noel J. Anderson.)

Q. And how long about were you home at that time?

A. Well, I wasn't home very long. I don't think I was actually in Fort Benton over three days.

Q. Did you and your father talk over any business matters during that period?

A. Yes, we did, we talked over forming a partnership and I agreed to it. [224]

Q. For what purpose?

A. Well, we had helped on the ranch all the time and he figured that if he gave us a share in the ranch, we would be more willing to do our best to make the ranch a paying proposition and he offered us this partnership agreement so it would be a little better than wages.

Q. Did he or did he not outline to you in general what he had in mind in forming the partnership?

A. He did.

Q. And what did he tell you as to the shares?

A. He and my mother were to each have one-third and my brother and I were to split the other third and we would have a sixth apiece.

Q. Was there anything said as to whether you were to buy and have an interest in and pay for any part?

A. Yes, he said we would be charged for the appraised value, I guess you would call it, of the property that would be in the new partnership.

Q. And you would be charged with one-sixth of that?

A. Yes.

Q. And how were you to pay it?

(Testimony of Noel J. Anderson.)

A. Out of the earnings of the partnership.

Q. And did he tell you whether or not there had been a previous meeting of himself and your mother and Robert?

A. Yes, he did. [225]

Q. What did he say about that?

A. He said he talked it over with Bob when he was home on Christmas vacation and it met with his approval.

Q. And what was said about whether he was going ahead; what did you say you want to do about it?

A. I wanted to go ahead with it.

Q. And was anything said as to when it was to start?

A. It was to start January 1st, '45.

Q. And was anything said about what your responsibility was to be after you got out of the service?

A. Well, I was in the Army then and I didn't know when I was going to get out, so after I got back I was supposed to help with the work the same as I had been.

Q. And what happened then after you left home when you were visiting at that time?

A. I went overseas.

Q. Where did you go? A. Okinawa.

Q. Were you in active service? A. I was.

Q. What was the result of that?

A. I was wounded on May 1st, '45. [226]

Q. And what was the nature of the result in general, not in detail?

(Testimony of Noel J. Anderson.)

A. I was hit by a small shell and returned to the States.

Q. You were returned to the States?

A. Yes.

Q. Where were you taken then?

A. Oh, I was in Brigham City, Utah, for a while in the hospital.

Q. In a hospital? A. Yes.

Q. And how long were you in the hospital, do you know, when you returned to the States?

A. No, I couldn't say the exact time. I think it was around the first of October, '45.

Q. And do you know where you were then from that time on until you were discharged?

A. After I returned to the States you mean?

Q. Yes. A. Yes.

Q. Where?

A. I was in Letterman Hospital in California for a week or two until they decided where to send me, and then they sent me to Bushnell General Hospital where I was given my Army discharge, and then they sent me to the Veterans Hospital, Sheridan, Wyoming, and I was only there a few days and they sent me home. [227]

Q. And about when did you arrive home?

A. Oh, it was around the middle of January or shortly after that.

Q. Of '46? A. Yes.

Q. And where have you been since that time?

A. Well, I was on the ranch all the time up until that fall I went to school down at Bozeman for the

(Testimony of Noel J. Anderson.)

year '46 and '47, and I have been on the ranch ever since I went to school.

Q. You were in school for part of the school year '46 and '47 at Bozeman?

A. Yes, I believe I took two quarters.

Q. At Montana State College? A. Yes.

Q. And the rest of the time you have been on the ranch? A. Yes.

Q. Now do you live on the ranch or in town?

A. Well, last winter I lived on the ranch and batched all winter.

Q. And have you been there a great deal of the time during the winters as well as the summers since then?

A. I have when I was needed out there.

Q. Who have you been working for or with since you were discharged from the Army? [228]

A. I have been working as a partner in the partnership of Noel Anderson & Sons.

Q. During all that time?

A. During all of that time.

Q. State whether or not since you returned from the Army the terms that were laid down in the agreement that you testified to were carried out?

A. They have been.

Q. And have you ever examined the books or do you know anything about the books of the company?

A. I have a general idea of them, yes.

Q. I hand you Plaintiff's Exhibit 12, Mr. Anderson, are you familiar with that book?

(Testimony of Noel J. Anderson.)

A. Yes, this is the book that our individual accounts are kept in, our partnership standing.

Q. How each member of the partnership stands?

A. Yes.

Q. In whose handwriting is that, if you know?

A. It is in my father's.

Q. Just glance through the pages and see if it is all in there? A. Yes.

Q. Are you particularly familiar with page 60 or not?

A. Yes, that is the record of my individual drawings on the partnership. [229]

Q. The first item, what does that mean? The first item there, if you know?

A. That is the \$7,500.00 that I was charged for my one-sixth share in the partnership.

Q. And where it says income tax, federal and state, do you know what that is?

A. That is the amount that I was charged for on, for the income taxes paid on '45 income.

Q. And on through since then? A. Yes.

Q. Down to the year '51, inclusive, for income tax? A. Yes.

Q. Now that is what you paid as income taxes?

Mr. Angland: Just a minute now.

Mr. Lewis: I will withdraw that.

Mr. Angland: I think it is contrary to some evidence that is already in, Mr. Lewis.

Mr. Lewis: Well, I don't know that it is.

Q. Does this represent, does it or does it not

(Testimony of Noel J. Anderson.)

represent the charges that were made on the books for your individual income tax returns?

A. It does.

Q. Now the other items. For instance, I call your attention particularly to the item "cash drawn" under March '46, \$348.00, do you know what that is? [230]

A. Well, that is money I drew from the partnership; I got for my own personal expenses.

Q. That was chargeable to you? A. Yes.

Q. And on down I direct your attention to net income June, "by cash '48," \$4,930.00, do you know what that is?

A. It is money that I drew from the partnership account.

Q. Now in other years down to January 1st, '51, does this column represent all of the withdrawals for your share in the partnership that you have made, including the payments of your income tax and any charges for any other purposes that were properly charged to you? A. Yes, it does.

Q. Directing your attention to the column on the righthand side, what does that column contain?

A. That is the record of my earnings in the partnership.

Q. And that includes your earnings down to '50, inclusive? A. That is right.

Q. Then the book at the present time does not have either the charges against you in the partnership accounts nor your credits for '52?

A. No. [231]

(Testimony of Noel J. Anderson.)

Q. Do you know whether or not during the years from beginning from January 1st, '45, to you know now whether or not the operations on the farm, including livestock operations, were conducted by the firm of Noel Anderson & Sons?

Mr. Angland: Just a minute. That is calling for a conclusion of the witness particularly.

Mr. Lewis: I asked him whether he knew.

Mr. Angland: Particularly with reference to '45. He testified he wasn't there only a few days in January.

Mr. Lewis: I will withdraw the question and rephrase it.

Q. Mr. Anderson, has or has not the operations since you became familiar with them after you returned from the Army been conducted on the Anderson lands and equipment in accordance with the terms of the agreement that was outlined to you prior to your going overseas?

A. It has been, yes.

Q. Each year? A. Each year.

Q. And you know, whether or not, except for '45, whether or not your mother and your brother as well as yourself have performed important and necessary services in the conduct of that partnership? A. Yes, they have. [232]

Q. Would it be possible for any person who is not trained in mechanics and in the use of farm machinery to have done the work that you have done since the formation of this partnership?

(Testimony of Noel J. Anderson.)

A. They wouldn't have been able to do all of it, no.

Q. And would that be true of experience in the handling of cattle, like branding and so forth in handling cattle? A. Yes.

Q. Do you know, Mr. Anderson, whether or not the record there shows that you have fully paid for your share in the partnership?

A. I believe it does.

Q. And do you know about when that was?

A. No, I couldn't say the exact date.

Q. Was there any understanding between you and your father as to when you would get a deed or any other evidence of your ownership in any part of the property, was there any understanding at the time the partnership was talked over?

A. We weren't to get any deed or anything until we had fully paid for our share.

Q. Have you received a deed for your one-sixth share in the real estate? A. I have. [233]

Q. I hand you Plaintiff's Exhibit No. 22 and ask you to examine it.

Mr. Angland: That is an exhibit that is in evidence?

Mr. Lewis: I was just going to ask him.

Q. Is this the deed that you received?

A. It is.

Q. Covering your share in the real estate?

A. Yes, sir.

Q. Mr. Anderson, has there ever been any conferences of any kind between the various members

(Testimony of Noel J. Anderson.)

of the partnership during the time since you returned from the Army with reference to policies to be adopted in the conduct of the partnership affairs?

A. Yes, there has.

Q. And who was present at those conferences?

A. The entire family.

Q. That would be your mother and father and your brother, Robert, and yourself?

A. Yes.

Q. And where did they occur?

A. At home.

Q. When, for instance, if you can recall, have they occurred, or on what occasion, why would they be called?

A. Well, purchase of new machinery or, well, land or anything. [234]

Q. Was that thoroughly discussed in those conferences or not?

A. It was.

Q. And was a decision, any decision to act in a particular way made as a result of those conferences or at those conferences?

A. Yes, there always was a decision made.

Q. And who had part, if you know, in the determination of what you were going to do?

A. We all had a part in it.

Q. And after you had discussed it was that when the decision was made?

A. Yes.

Q. Is that or is it not true on any matter or policy or purchase of additional land or the sale of a quantity of crop for any particular year, does it enter into that that may be in storage?

(Testimony of Noel J. Anderson.)

A. Yes, everything that the partnership, every business the partnership transacts.

Q. Will you state whether or not you have had an active part in those discussions?

A. I have.

Q. What about your brother?

A. He has too. [235]

Q. What about your mother?

A. Well, on discussions on which farm machinery to buy she doesn't know much about it so all she can do is listen but she is there.

Q. She listens in on it? A. Yes.

Q. What about when you mention the purchase of land, what about that?

A. She has her voice in that.

Q. And how often do such conferences occur?

A. There is no set time or how often, just whenever they come up.

Q. Whenever there is a problem comes up on purchasing a large piece of machinery or purchase of more land? A. Yes.

Q. Or the sale of stored wheat, any other such a problem that is a matter of interest the entire partnership, is that right?

A. Yes, that is true.

Q. Mr. Anderson, does the account there of yours include earnings for the year '45? A. It does.

Q. You shared in that even though you were in the service? A. That is right.

Mr. Lewis: You may cross-examine. [236]

NOEL J. ANDERSON

Cross-Examination

By Mr. Bowen:

Q. Mr. Anderson, turning to your statement in '38 you started doing a full man's job or rather a man's job on the ranch, how old were you in '38?

A. 12 years old.

Q. You mean at age 12 you began doing a full man's work on the ranch? A. I did.

Q. And that involved driving truck, for instance? A. Yes.

Q. Would that be true say to Fort Benton, down to Loma?

A. Wherever I could travel without a driver's license.

Q. That would restrict your operation considerably, wouldn't it? A. No, it would not.

Q. You couldn't come to Fort Benton, could you? A. I didn't have any reason to.

Q. Could you go to the several stations to carry wheat in that locality?

A. In the year '38 we hauled wheat to Virgil and there is no highway connected.

Q. You mentioned that you helped with repairs up until you went into the service in '44, that is a correct statement, is it? [237] A. Yes, sir.

Q. And that after you returned you began taking over the bulk of the repair work except the heavy work that had to be taken to town?

A. Yes.

(Testimony of Noel J. Anderson.)

Q. I don't believe we established your first school year down at Montana State?

A. The winter of '43 and '44.

Q. You went there—when does the school term begin there?

A. I believe that year began September 25th.

Q. September 25th of what year?

A. '43. That is somewheres close.

Q. Did you go down earlier that year to take part in rushing activity?

A. I was a freshman that year. Well, I hadn't completed high school when I went down to college.

Q. And you completed your first year at Montana State in about June, '44?

A. That is right.

Q. Is that correct? A. Yes.

Q. You refer to certain work performed on the ranch in the summer of '44, were you paid for those services?

A. I don't believe I was in '44. [238]

Q. If we were to refresh your recollection and show you in '44 your income tax return which referred to wages paid to you, would that help your recollection whether or not you were paid wages the summer of '44?

Mr. Lewis: If the court please, I think that is improper; if he has that material I think it should be shown to the witness.

Mr. Bowen: May I have your '43 return, partnership return?

(Testimony of Noel J. Anderson.)

Mr. Lewis: Here is the partnership of A. E. Anderson & Sons.

Mr. Bowen: That would be the only one, wouldn't it?

Mr. Lewis: Is that the one you are referring to?

Mr. Bowen: Necessarily.

Q. Before we get into that further, Mr. Anderson, you state that in '44 you did half the work relative to planting, is that correct?

A. Yes, sir.

Q. And your brother also aided you?

A. Yes.

Q. Who else helped you with the planting in '44?

A. I don't remember whether we had a hired man that year or not.

Q. Did your father help with the planting in '44?

A. I don't believe he did. [239]

Q. Who did the other half?

A. If I did half and my brother did half, that is all of it.

Q. Oh, Robert did the other half?

A. Yes.

Q. How many acres in cultivation in '44?

A. 1,100 about.

Q. Each of you planted roughly 550 acres of wheat?

A. Yes, sir.

Q. This '44 return refers, Mr. Anderson, to labor hired \$5,261.80, to whom could those wages have been paid if it weren't you or your brother?

A. We must have had hired man.

Q. Do you think you would pay a hired man \$5,200.?

(Testimony of Noel J. Anderson.)

A. Could have had more than one, too.

Q. Just now you said you didn't recall?

A. I said I didn't recall; I didn't say we didn't have one.

Q. Can you state positively you didn't get paid wages for your work in '44?

A. I may have received wages for helping with the harvest.

Q. Do you have any idea how much those wages would be? A. No, I don't. [240]

Q. Do you deny that you were paid wages for the work you did in planting? A. Yes, I do.

Q. Then after your ranch activity after the summer of '44 was your induction into the service in September that year, wasn't it?

A. Yes, it was.

Q. So then you were home in '44 only from June to September, is that correct?

A. That I believe would be correct.

Q. You referred to your delay enroute visit in the latter part of January, '45, how many days was it you said you were home?

A. I don't remember exactly but I don't believe I was actually at home more than three or four days.

Q. A very short time? A. Yes.

Q. You had no anticipation at that time of being released from the armed forces, did you?

A. Well, I knew I would get out some day but I didn't know when.

Q. With reference to the account book which

(Testimony of Noel J. Anderson.)

you have testified about, Mr. Anderson, allegedly reporting the allocable interest to each of the alleged partners here were concerned, do you recall whether or not you had any withdrawals in '44?

A. No, I didn't have any withdrawals. [241]

Q. You didn't have any withdrawals?

A. I wasn't there in '45 except for the income tax that was withdrawn.

Q. Referring to the income tax, you were here yesterday when your father testified that he signed that return, isn't that correct?

A. That is correct.

Q. Does he customarily sign your income tax returns?

A. He doesn't customarily but when I am not there—I was over in Lehti—well, I don't know just where I was but anyway I wasn't home.

Q. You say you got out of the service, you were discharged, I believe, January 6th, '46—either January 5 or 6?

A. Yes.

Q. The income tax return which is in evidence was dated January 15th, '46; are you aware that it is your responsibility to sign your own income tax return?

A. If it wasn't signed by me, I wasn't home.

Q. If it wasn't signed by you, you say—I hand you your '45 income tax return, does your signature appear there?

A. No, it doesn't.

Q. How is it signed?

A. Signed Noel Anderson, Jr.

Q. By whom?

(Testimony of Noel J. Anderson.)

A. By Noel Anderson. [242]

Q. By Noel Anderson; in other words, you didn't? A. That is right.

Q. Did your father likewise sign your '45 State income tax return?

A. I suppose he did; I wasn't there.

Q. Did he your '45 income tax?

A. It was paid out of the joint partnership account.

Q. How was it paid, do you recall? To refresh your recollection, I am not trying to cross you up, your father stated in testimony yesterday it was paid by his check, is that correct?

A. Yes, that is right. There was no partnership account in '45.

Q. That is right. With reference to the partnership account of Noel Anderson & Sons which was stipulated to have been opened for the first time May 1, '46, were you authorized to draw against that account?

A. No, that was my father's and he takes care of the books and runs our errands for us and we do the work.

Q. When you wanted a portion of your alleged interest in this partnership income then you had to go to your father and get him to write a check for you, is that right? A. That is right.

Q. Were you restricted in the manner?

A. We were restricted to our needs until our share in the partnership had been paid and from then on we have not been restricted. [243]

(Testimony of Noel J. Anderson.)

Q. By needs I presume you would refer to your college needs, your clothes and that sort of thing?

A. That is right.

Q. You have referred to conferences had between the members of your family and you included Mrs. Anderson and all those conferences, of course, which you refer to were after your return from the service in '46, were they not?

A. Well, we had conferences before that.

Q. But I mean conferences as a partnership?

A. Well it had to be because I wasn't there in '45.

Mr. Bowen: No further questions.

NOEL J. ANDERSON

Redirect Examination

By Mr. Lewis:

Q. Mr. Anderson, you made the statement that if your return in '44, in '45 I should say, showed signature by your father that you were not home so that you could sign it? A. Yes, I believe.

Q. Would you state whether or not you have signed all the other returns from that time on?

A. To my knowledge I have. [244]

Q. I call attention particularly to the fact that you may have had some wages for helping with the harvest of '44? A. Yes.

Q. Do you know who received the crop for '44?

A. For '44, well, the crop that was harvested in

(Testimony of Noel J. Anderson.)

'44 was part of the A. E. Anderson estate, A. E. Anderson & Son partnership.

Q. You meant to say then, if you received any wages then in '44, that it was for work performed for the partnership of A. E. Anderson & Sons, is that right? A. That is right.

Q. But this work you were telling about for preparation for '45, that you told about in detail that crop was harvested by the new partnership?

A. It was.

Q. And did you get credit for your share in the earnings that hear from that crop?

A. In '45, yes.

Mr. Lewis: That is all.

The Court: We will take a recess. (3:05 [245] p.m.)

(Court resumed, pursuant to recess, at 3:15 o'clock p.m., at which time all counsel and parties were present.)

ROBERT M. ANDERSON

was called as a witness for plaintiff, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lewis:

Q. Will you state your name and age?

A. Robert M. Anderson. Twenty-five.

Q. Where do you live, Mr. Anderson?

A. I live on the Noel Anderson & Son ranch.

Q. In Chouteau County, Montana?

(Testimony of Robert M. Anderson.)

A. That is correct.

Q. How long have you lived there?

A. Well my residence has been there all my life. I have lived there all my life except when I was in school.

Q. And were you away for any other purposes.

A. Well, I have been in the service twice.

Q. Now that is the land that is involved in this partnership proceeding here, too?

A. That is correct.

Q. And what is your occupation, Mr. Anderson?

A. I am a farmer and rancher. [246]

Q. And where were you born?

A. I was born in Fort Benton.

Q. Then if you have lived on this farm all your life, you spent your childhood there as well as later years? A. That is right.

Q. What are your parents' names?

A. Noel Anderson and Agnes Anderson.

Q. And Noel Anderson is the plaintiff in this action? A. That is right.

Q. Are you married, Mr. Anderson?

A. I am.

Q. And when were you married?

A. February 21, '50.

Q. Do you have any children?

A. I have one six.

Q. And is your family making their home with you on the ranch? A. They are.

Q. Have you done work on that ranch, Mr. Anderson?

(Testimony of Robert M. Anderson.)

A. Yes, I have. I have worked there ever since I have been big enough to work. [247]

Q. And when was that?

A. Well in '39 I remember I drove a truck in harvest. I say that I actually started a man's work in running a tractor in '42.

Q. And what has been the nature of your work?

A. Well, we do, my brother and I work on the farm and carry out the summer following, haying operations and take care of the cattle.

Q. How long has that been true if that was your work? A. Well, at least since '42.

Q. Do you know who operated the ranch at that time? A. In '42?

Q. Yes. A. A. E. Anderson & Son.

Q. Was that A. E. Anderson—who was that?

A. He was my grandfather.

Q. Your grandfather, your father's father?

A. That is right.

Q. And how long did you work for that partnership? A. Well, at least two years.

Q. Were you here in Chouteau County at the time of your grandfather's death?

A. Yes, I was in high school at that time.

Q. And it occurred when?

A. Christmas Eve '43. [248]

Q. And who operated the ranch for the year following your grandfather's death?

A. The year '44, you mean?

Q. Yes.

(Testimony of Robert M. Anderson.)

A. I believe that was carried on as A. E. Anderson & Son.

Q. Do you know whether or not the crop for '44 was seeded prior to your grandfather's death?

A. It was seeded in the fall of '43.

Q. And that work on the farm so far as the crop for '44 is concerned was by the old partnership?

A. That is right.

Q. Now did you do any work on the farm that year in preparation of the '45 crop?

A. In '44 I graduated from high school and as soon as I got out of high school I went on the farm and worked.

Q. What was the nature of the work that year?

A. We were doing summer fallowing and put up some hay and took care of the cattle.

Q. And did you help any with the seeding or not that year? A. In '44?

Q. Yes. A. Yes, I did. [249]

Q. Who worked with you, if anyone?

A. Me and my brother.

Q. Noel J. Anderson? A. That is right.

Q. And what proportion of the seeding did you and your brother do on that coming crop?

A. Well, in seeding we usually run a double shift so I probably did about half and he did about half?

Q. And how many acres would that be?

A. Well, somewhere around 1,000 to 1,100.

Q. Were you away from the farm any during the year '44?

(Testimony of Robert M. Anderson.)

A. Well, as I said before, I was in high school in the spring of '44 up until probably the 20th of May until graduation and about, I would say about the 25th of September I went to school, went to college.

Q. Did you ever do any work on the farm with either the cattle or in the farming before the school year was up while you were in high school?

A. Well, I know I helped with the branding. Weekends I probably went out to the ranch. We made it a practice to do that when in school but not during the week when school was in session. [250]

Q. When you went out on the weekends what would be the nature of your work?

A. Well anything that my father or my grandfather, it would be my father in '44, that he saw fit to put us to doing.

Q. Did you go away in the fall of '44 or not?

A. Yes, I did.

Q. Where did you go?

A. I went to school at Montana State College.

Q. What year was that? A. '44.

Q. And what year were you in college?

A. I entered in the fall of '44 and graduated in the spring of '48.

Q. Was your college course continuous each year? A. It was.

Q. And what would happen in the spring of other years as well as '44? Now what would happen if anything in '45 in the spring with reference to the ranch?

(Testimony of Robert M. Anderson.)

A. Well, branding time the middle of May if it was at all possible for me to get home, I would get home for branding and as soon as I got out of college, as soon as the semester let out I would go home and work on the farm during the summer.

Q. And when was it the school was say out?

A. Somewhere between the 1st and 6th of [251] June.

Q. And in '45 what did you do then?

A. As soon as the school term was out I went home to the ranch and worked all summer.

Q. Do you know when your brother entered the service? A. September of '44.

Q. And do you know how long he was away?

A. He came back sometime in January of '46.

Q. And who worked on the farm in '45 other than you then?

A. Well, my dad worked there and we had a hired man.

Q. Do you know anything about any work your mother did on the farm in '45?

A. In '45 she drove the Chevrolet pickup in the harvest.

Q. That would be doing what?

A. Hauling wheat.

Q. Explain just what you did in the farming operations in '45? A. Myself?

Q. Yes.

A. Well, when I got home in '45 the plowing would have been done. From then on we summer fallow and cultivated the land throughout the sum-

(Testimony of Robert M. Anderson.)

mer, and I helped with the harvest and seeded the crop that fall. I worked with the cattle and did the riding that was necessary. [252]

Q. Was there anything different in what work you did in '45 from '44? A. None.

Q. About the same work? A. Yes.

Q. And state whether or not the work you did on the summer fallowing and the seeding in the fall of '44 was for the crop of '45?

A. It was for the crop of '45.

Q. What do you have on the farm besides the wheat farming operations?

A. We have quite a few cattle.

Q. How many did you have then?

A. Well, I couldn't say exactly, probably 150 cows.

Q. And what is the usual amount that you run on this land?

A. Well, somewhere around 150, maybe 200.

Q. And is there any river by the land that is used in connection with the livestock operations?

A. Yes, there is.

Q. What is done with that?

A. Well, we cut hay there when there is hay to be cut.

Q. Do you know what that land is, the name of the former owner?

A. That belonged to Billy Kingsbury. [253]

Q. What sort of machinery do you operate on the farm?

A. Well, I drive any of the tractors, mowers,

(Testimony of Robert M. Anderson.)

trucks, anything, just about any piece of machinery on the farm.

Q. What kind of tractors?

A. I usually run a rubber wheeled tractor.

Q. And have you had any experience in the repair of tractors? A. Yes, I have.

Q. What happens when you are working in the field with reference to a breakdown? What do you do if your machine breaks down?

A. Well, fix it if possible.

Q. State whether or not you usually get it fixed or whether you take it into town?

A. Well, unless it is a breakdown that is beyond the scope of our shop we fix it ourselves.

Q. You maintain an equipped shop on the farm?

A. Yes, we do.

Q. And are there enough tools and equipment there to do the necessary repairing for tractors?

A. Yes, there are.

Q. And other pieces of machinery?

A. Yes, sir. [254]

Q. And is it part of the partnership?

A. It is.

Q. Was there a shop there under the old partnership?

A. Yes, my dad always use to do the repair work.

Q. And has there been a shop maintained since the beginning of '45 and since?

A. That is correct.

(Testimony of Robert M. Anderson.)

Q. How many acres do you farm with the, for wheat and other grains?

A. Oh, approximately 1,000 to 1,100 in crop a year.

Q. Each year? A. Yes.

Q. Total it up to 2,200?

A. Possibly more now but at that time about that.

Q. And is there hay land that has been cut over in addition to that? A. There is.

Q. State whether or not your brother worked with you in the operations that you described here during the years, your brother Noel J.?

A. Yes, he did, except in the year '45 when he was in the Army.

Q. Did you ever talk with your father about becoming a partner in this enterprise?

A. Yes, when I was home from college at Christmas time '44 and sometime during the time that I was home and the time I went back we discussed forming a new partnership. [255]

Q. And were there any details discussed at that time?

A. Well, the details weren't what you would say elaborate; it was set on what share we would receive for our services and the manner in which we would receive our share of the partnership and pay for it.

Q. And was the shares in that partnership as it was discussed at that time?

A. My brother and I were each to receive one-

(Testimony of Robert M. Anderson.)

sixth of the income and my father and mother were each to receive one-third.

Q. And were you to, what about any purchase on your part, was there to be any?

A. We were to pay for one-sixth of the appraised value of the partnership.

Q. And what did that include?

A. That included all the land and cattle on the farm.

Q. Farm machinery? A. Correct.

Q. Equipment? A. Yes.

Q. Entire ranching operations?

A. That is right.

Q. And was it to include the land, all the land?

A. That is right. [256]

Q. Was there any State land under lease at the time? A. Yes, there was.

Q. Was it to include that or not?

A. It was to include that.

Q. Now how were you to pay that? You say the appraised price? What do you mean by that appraised price?

A. Well, the figure my father used was the figure arrived at when the estate of A. E. Anderson was appraised.

Q. And it was on that basis that you formed a partnership? A. That is right.

Q. Was the agreement definite as to when it was to begin?

A. It was to begin on January 1st, '45.

(Testimony of Robert M. Anderson.)

Q. And what was the arrangement about the '45 crop?

A. We were to share one-sixth in the income for '45.

Q. That would include the cattle income?

A. That is right.

Q. And the other income, is that right?

A. That is right. [257]

Q. Now do you know whether the farm was conducted in '45 under that agreement?

A. Yes, it was.

Q. You had a part in it? A. I did.

Q. And you received credit for one-sixth share of all of the earnings in '45, is that right?

A. That is right.

Q. Or as it was turned into cash?

A. Right.

Q. Do you know how the books of the partnership were kept?

A. I am familiar with them in a general way, yes.

Q. How are the receipts and expenditures kept?

A. Well, the receipts and expenditures are entered in a book; its a cash book, I believe.

Q. I will show you Plaintiff's Exhibit 9 and ask you if you know whether that is the book or not?

Mr. Angland: Mr. Lewis, I was going to suggest something here. I don't want to in any manner suggest that you cut off the examination of this witness but I thought that both sides might expedite this matter if we stipulated this witness's deposition has

(Testimony of Robert M. Anderson.)

been taken, and either party in submitting this matter to the court can use any part of it or all of that deposition. I think you are going into matters that are covered in the deposition. Now I am not suggesting you shorten that in any way but I am suggesting the possibility. [258]

Mr. Lewis: I think we can get along pretty rapidly from now on. We are reaching the end of our case now.

Q. Are you familiar with that book?

A. Yes, I am.

Q. Do you know of your own knowledge whether Plaintiff's Exhibit 9-a and Plaintiff's Exhibit 9-b, 9-c, 9-d and 9-e contain the cash record, the record of the cash received and expended during the year '45?

A. That is correct.

Q. And do you know whether this is the book that contains the record of the partnership for later years?

A. Yes, I believe the book is carried on for '46, '47, '48.

Q. Mr. Anderson, I hand you Plaintiff's Exhibit 12 and ask you to examine that and state whether you are familiar with, particularly with page 62?

A. Page 62 is a detailed entry for each year since '45, January 1st, '45, of all my credits and withdrawals.

Q. And do you know about page 60 as to whether that represents another member of the partnership?

A. Those are the credits and withdrawals of my brother, Noel J.

(Testimony of Robert M. Anderson.)

Q. And are you familiar enough to state whether you know what page 58 is?

A. 58 is a similar page reflecting the withdrawals and credits of Noel and Agnes Anderson. [259]

Q. Now if you will go back to page 62, your own account, what is the first item there?

A. January 1st, '45, is the date; its entitled "share in partnership \$7500.00."

Q. That was charged against you in this record, was it? A. That is right.

Q. Is that in accordance with the partnership agreement? A. It is.

Q. Now there is another item there "cash drawn," page 1, is \$855. Do you know what that is?

A. Well, page 1 is, dad keeps a separate page for each year of any money that we withdraw, and page 1 is the money I drew in '45.

Q. Then it is carried forward to page 62 as one lump sum? A. That is right.

Q. Now will you examine through the other pages and see whether or not that is followed in other years in the same manner and whether it is followed for your brother?

Mr. Anglund: I am going to object to any further evidence on this. I think the record speaks for itself. There is a reference in each instance to the page. [260]

Mr. Lewis: I do think we can shorten it.

Mr. Anglund: The records are in evidence and I think they speak for themselves. I note the witness has just referred to that first entry which re-

(Testimony of Robert M. Anderson.)

ferred back to page 1, and I take it the second entry is going back to page 2 and so on, so it is a recitation by the witness of what is in the book.

The Court: What he wants to do is show the familiarity of the different partners of the partnership of the account and call it to their personal attention. It is in the record all right, in evidence now. Well, proceed as fast as you can.

Q. (By Mr. Lewis): Mr. Anderson, I will ask you whether or not if you know the left-hand side of page 62 of Plaintiff's Exhibit 12 contains all of the charges made by the partnership against you for your share in the partnership and for your withdrawals, including your payments for your individual income tax, state and federal, from the beginning of the partnership January 1st, '45, down to the close of the year '51, and including the payment of the '51 tax, federal and state?

A. I believe it includes through the year '50.

Q. '50? A. '50.

Q. I am sorry. Did I say '51? A. Yes.

Q. I meant to say '50. It includes through the year '50? A. Right.

Q. And includes the payment for the tax, taxes for '50? A. That is right.

Q. Now on the other side of the page, the other column, what does that represent, if you know?

A. That is my share in the partnership earnings for each of the years starting with '45, through '50.

Q. Do you know the handwriting in that book?

A. That is my father's.

(Testimony of Robert M. Anderson.)

Q. Wherever you have noticed is your father's? Just glance through it and state whether or not it is your father's handwriting, if you know?

A. All of it that I see is my father's handwriting.

Q. Mr. Anderson, have you received enough in profits to pay for your share as agreed upon in the partnership? A. I have.

Q. Did you have any knowledge when you might get any title to the land or was there any agreement as to that effect?

A. Well at the time the partnership was formed in January 1st, '45, we knew that we would not get deeds for the land until our share in the land and the cattle [262] were paid for.

Q. And when was it paid for about?

A. About '50.

Q. I will show you Plaintiff's Exhibit No. 23 and ask you if you recognize what it is?

A. This is the deed that I received from my father and mother for an undivided one-sixth interest in the real estate.

Q. Mr. Anderson, what have you to say about the work that you and your brother have been doing in handling the machinery and in the handling of the cattle as to whether if someone took your place whether he would have to be an expert with experience to do the type of work you and your brother have been doing?

A. Well he wouldn't have to be an expert; it

(Testimony of Robert M. Anderson.)

would be desirable that he at least have some experience; you can put a hired man in to doing our work if you watch him, yes.

Q. So, of course, that makes the farming operations more profitable than if you had to depend on hired help alone?

A. Well, yes, any man knows that if you are working for yourself, you are going to take a lot better care of the machinery and see to it that there aren't repair bills that aren't necessary; a hired man doesn't care whether he turns it up or [263] not.

Q. And do you know whether the business was conducted in '45 by the new partnership of Noel Anderson & Sons? A. Yes, I do.

Q. Was it?

A. Yes, it was. I was there when I wasn't in school; I observed the farm operation and observed my father at times keeping books.

Q. Was it conducted in accordance with the agreement that you entered into at your Christmas time meeting in '44? A. It was.

Q. Did your mother do any specific work in the year '45 in connection with the farm work?

A. I believe I testified that she drove the Chevrolet pickup in the harvest in '45.

Q. And what was that used for?

A. For hauling wheat to town.

Q. And do you know whether or not she has done any other outside work during the years?

A. Well, she is always there when we brand to

(Testimony of Robert M. Anderson.)

help cook for the crew. She always has been there when we branded and she is available for errands.

Q. Do you have a big crew in branding time?

A. Yes, we do.

Q. How big?

A. Oh, 10, 12, maybe 14. [264]

Q. Do you remember whether you took part in the branding operations in '45?

A. Yes, I did. I came home from school.

Q. From college? A. Yes.

Q. Especially? A. Yes, I did.

Q. And then did you go back after that part of the work was over?

A. I went back and finished my quarter of school, yes.

Q. Now has the work that you have described that you and your brother have done, been done by both of you since the partnership was formed each year except when your brother was in the military service? A. That is right.

Q. Mr. Anderson, when did you first enter the military service? A. October 14th, '48.

Q. And how long were you in?

A. I was released December 1st, '49.

A. And did you re-enter the service after that?

A. I went in the service on the 8th of October, '51.

Q. And when were you discharged?

A. On the 10th of November, '52.

Q. And where were you during that period?

A. I was in the Army. [265]

(Testimony of Robert M. Anderson.)

Q. And where were you stationed?

A. Well—in both periods?

Q. No, particularly in the latter period. We won't go into detail.

A. Well, in October I went to Fort McCord, Washington. I stayed there until January, '52. I was sent to Fort Belvedere Engineering School and as soon as I completed that I was shipped to Germany.

Q. How long were you in Germany?

A. Approximately four months.

Q. Did you enter the Army this last time of your own accord?

A. Well, I have to say partially yes because I am a member of the reserve and when I signed reserve papers I said I would go into the Army if called. However, I did not volunteer for active duty.

Q. And if you hadn't been signed up for reserve, would you have stayed on the farm this last service or gone into the Army?

A. In all probability I probably could have stayed there.

Q. On the farm? A. Yes.

Q. Do you know anything about your father's health during these years?

A. Well, both my brother and I have known for a number of years that my father has heart [266] trouble.

Q. And does that prevent him from doing a lot of heavy work or not? A. Yes, it does.

(Testimony of Robert M. Anderson.)

Q. And has it through the years?

A. It has.

Q. Because of that what have you to say as to whether or not you boys have taken on more of the burden of the work than you would otherwise?

A. Well, since then, particularly since the time of my grandfather's death my father has more or less assumed the role of manager and director of the operations while my brother and I and hired men do the work.

Q. What proportion of the work for the crop of '45, the actual work up to the time the harvest was began did you and your brother do in '44 before you left?

A. Well, we had one hired man that year, I believe, so three of us working would be about 30%, I believe; at least 60%.

Q. That would be on summer fallow?

A. Right.

Q. I am talking about the '44 work. You had a hired man in '44, I believe you said. And then what about the seeding?

A. I believe my brother and I did the seeding ourselves. [267]

Q. And was there need for much work to be done in '45 on the crop for '45?

A. Just harvesting.

Q. And you took part in that?

A. I did.

Q. Mr. Anderson, a stipulation shows here that

(Testimony of Robert M. Anderson.)

you had a bank account in the Choteau County Bank; do you know when that was opened?

A. I believe my first bank account in the Choteau County Bank was after I got out of the Army the first time, which would be in December of '49.

Q. Now did you have any other bank accounts of your own prior to that time?

A. Yes, I did.

Q. And when?

A. Well, I don't remember whether I opened the bank account my first quarter of school in college or not, but at least the next year I opened bank accounts in the Security Bank and Trust Bank in Bozeman, Montana.

Q. And how long was that maintained?

A. Well, I opened the bank account in the fall of the year when I went down to school. I usually took money with me and I deposited the money, and I maintained my account until I left school for that year, at which time I would usually have spent all the funds so I closed it. [268]

Q. What happened then again in the fall?

A. I would open another one.

Q. And did that happen clear through your college years? A. Yes, sir.

Q. And then you didn't have an account while you were in the service, at least in this part of the country.

A. Not in this part of the country. I maintained bank accounts at all times when I was in the service.

(Testimony of Robert M. Anderson.)

Q. And deposited whatever money came to you from any source? A. That is right.

Q. Are you familiar with how the expenses and purchases of any machinery, new machinery have been paid for in the partnership account, what accounts they have been paid for out of?

A. They are paid for out of the joint account of Noel Anderson & Sons.

Q. Partnership account?

A. That is right.

Q. Mr. Anderson, did you, have you had any conferences of any kind with members of the family partnership, your father and mother and Noel, Jr., and yourself, since the formation of the Noel Anderson & Sons partnership on January 1st, [269] '45?

A. Well, I think I could say that generally as a rule between my father and my brother and I we are in conference all the time. We may not be all together at one time but particularly in the purchase of machinery if I am living at the ranch and come in and stop at the house maybe dad has some literature on tractors and I look at it and we talk about it, and just in general we talk about all of our operations of the farm.

Q. And as a result of those conferences is there action taken?

A. Well, if we have something definite in mind, yes.

Q. And is that as a result of coming to agreement? A. Yes, it is.

(Testimony of Robert M. Anderson.)

Q. By various members of the partnership?

A. Yes.

Q. Is your mother in on any of those conferences?

A. Well, on the purchase of land or any large transaction she would be in it; carrying out the farm work why ordinarily not.

Q. Has there been such a conference since the partnership was formed?

A. Yes, there was, a conference on some [270] land.

Q. Was she in consultation on that?

A. She was.

Q. And what was the result of your discussion on that, did you agree what your policy would be?

A. We did.

Q. And did the partnership follow out that agreement?

A. Yes, we did; we purchased that land.

Q. Has that been common practice ever since the partnership was formed? A. Yes.

Mr. Lewis: I think that is all. You may cross-examine.

ROBERT M. ANDERSON

Cross-Examination

By Mr. Bowen:

Q. Mr. Anderson, you stated you graduated from high school May 20, '44, is that correct?

A. I don't recall. I said somewheres around there. I don't remember the exact date.

(Testimony of Robert M. Anderson.)

Q. Sometime the latter part of May, '44?

A. That is right. [271]

Q. At which time you were how old?

A. Sixteen.

Q. Sixteen and graduated from high school the latter part of May, '44? A. I was.

Q. During the other years—college students at Montana State college are allowed to join fraternities in their freshman year, were they not?

A. They were.

Q. You left for college in early September of '44, didn't you?

A. Somewhere around the 25th is when freshman week is held at Montana State.

Q. Did you go up early for any fraternal rushing activities?

A. They did not have such things at Montana State. The fraternal rushing is held during freshman week which is usually the last week in September.

Q. At that time I presume you intended to graduate, did you not? A. I did.

Q. You stated in your deposition referred to earlier, taken last October 3rd, that you were taking a course in what type of engineering?

A. Industrial. [272]

Q. Industrial engineering?

A. That is correct.

Q. October, '51. I stand corrected.

A. What was October, '51?

(Testimony of Robert M. Anderson.)

Q. That was the date of the deposition instead of last October. What did you have in mind in taking an industrial management course?

A. Well, as I testified on the deposition——

Mr. Lewis: I think, if the court please, if he is going to refer to the deposition he ought to get the exact statement so that——

Mr. Bowen. I am trying to refresh his recollection; I am not trying to cross him up.

Mr. Lewis: Turning to the particular part, if the court please, would be the proper procedure.

Q. Do you need your recollection refreshed?

A. No, I didn't need it refreshed. I know just exactly what is in there.

Q. What did you have in mind?

A. It has been proved time and time again in ranching that it is not necessarily the failure in the methods employed in farming but it is the management that causes failure in farming.

Q. So it was important to you that you get that training?

A. It was important that I get training in management, and I also had other things, and sometimes [273] a farmer's health goes bad and he can't farm all his life.

Q. You graduated in '48, June of '48?

A. That is right.

Q. And at that time you were awarded a reserve commission, Army Reserve Commission, is that right?

A. That is right.

Q. You were in active R.O.T.C. work the entire

(Testimony of Robert M. Anderson.)

four years? A. That is right.

Q. Were you ever away in an R.O.T.C. summer camp? A. I was away in '47.

Q. '47.

A. It would be the end of May, junior year.

Q. Summer of '47. You noted, Mr. Anderson, on direct that if it were possible you would come home from school to help with the branding, is that right? A. That is right.

Q. Did you as a matter of fact come home for the branding in the spring of '45?

A. I know I did.

Q. You are sure of that?

A. That is correct.

Q. You recall the testimony relating to your father signing your income tax return January 15th, '46, do you not? A. I do. [274]

Q. Which return relates to income earned in '45. A. That is right.

Q. And it is true then that he signed that return, signed your name by himself and paid the tax by his check?

A. That is right. I was not home to sign the return.

Q. If you can come home for spring branding in '45, can't you come home for as important a matter as signing, filing and signing your own income tax return a year later in '46?

A. I suppose I could have.

Q. How far is Bozeman from here?

A. 200 miles.

(Testimony of Robert M. Anderson.)

Q. Is it customary that your father at least at that time transacted such business as this for you?

A. In '45 when the partnership was formed he transacted a lot of business in his own name and the old partnership name because at that time there wasn't a bank account of Noel Anderson & Sons.

Q. We discussed with your brother, Noel, Jr., the help that you had on the ranch on the summer of '44 and it was pointed out at that time that the A. E. Anderson partnership return for the period '44 showed wages paid of \$5,000.00, does that help you recall the number of farm hands you had at that time? [275]

A. In '44 we had one hired man that helped with the field work and we had another hired man who was my grandfather's brother that did fencing and helped with the haying.

Q. Were you paid wages for the work performed in the summer of '44?

A. I very possibly was paid wages for harvest. I don't know whether I was or not but it is very possible that I was.

Q. In his testimony your brother, Noel, Jr., stated that he aided in repair work up until his entry in the service in '44 and thereafter did a considerable amount of it, did you aid in repair work? A. When?

Q. Up to and including the year '45?

A. Well, yes, any time when you are doing farming you have repair work to do.

Q. When is the bulk of the repair work done?

(Testimony of Robert M. Anderson.)

A. The major repair work such as tractor repair is done in the winter time.

Q. So you would be away at college?

A. For major repair work you remember any time you pull a piece of machinery in the field you do repair work.

Q. By repair work you mean assembling it?

A. Suppose you take a rod weeder out in the field and you bend a rod. [276]

Q. I say that is the type repair work you refer to?

A. Yes.

Q. You stated, Mr. Anderson, on direct just now that for some time you had known that your father had a heart condition, could you pinpoint that time a little closer?

A. Well, I will be conservative and say '40.

Q. Since '40?

A. I knew it before that but I will say '40.

Q. You have referred to conferences with the members of your family, your mother, Noel, Jr., and your father, respecting purchases of machinery, purchases of land, leasing of land and that sort of thing, when did those conferences occur?

A. We don't conduct conferences at a certain hour or day or anything; it goes on with the operation of our business.

Q. I misled you with my question. I mean what period, what year. I don't mean the hour or day.

A. Starting with '44 when we formed the partnership and continuing from then until right now.

(Testimony of Robert M. Anderson.)

Q. Well, of course, it has been brought out that your brother Noel was not even in the State in '45 and that you were away in school in all but three months of '45, when did you confer? [277]

A. When I was there.

Q. I see, when you were there and something would come up?

A. My folks occasionally visited me at the school and we wrote letters back and forth concerning the operation of the business and in general I knew everything that was going on and was perfectly satisfied with it.

Q. You were 17 at that time, were you not?

A. In '45.

Q. 16 in '44; you graduated from high school.

A. I was 17. I was 18 in June, '45.

Q. And a freshman in college? A. Yes.

Q. Did you think your father deferred to your judgment very much in those days?

A. He was acting as manager of the partnership; that was his job. I respected his judgment probably a little more than my own but at the same time he didn't shut me up when I had something to say. He had been farming for about 35 years at that time and I imagined he knew more about it than I did.

Q. Of course he would and I am sure you would defer to him. With reference, Mr. Anderson, to your withdrawals in '45, do you remember how those withdrawals were made; how was that money made available to you in this partnership, your

(Testimony of Robert M. Anderson.)

alleged partnership withdrawals in Noel Anderson & Sons? [278]

A. I don't follow just what you want.

Q. I believe that Exhibit 12 shows that you received \$800.00, as I recall, as an alleged partnership distribution in '45, how was that money made available to you?

A. You mean how did I get it?

Q. Yes. A. I requested it.

Q. And your father would write his check and give it to you? A. That is right.

Q. And the purpose of these withdrawals was to pay your tuition in school and clothes and that sort of thing, is that correct?

A. Spending money.

Q. And spending money?

A. That is right.

Q. In other words, you were privileged so to speak to spend it for your needs and the rest was to stay in the business to pay for your purported partnership interest?

A. That is right. I was given the privilege of drawing the money that I needed for my schooling and reasonable amount of spending money.

Q. If you did run out of money, then you would write your dad and he would send you a check, is that right? [279]

A. I didn't run out of money very often.

Q. I am glad to hear of one college boy that has never run out of money.

(Testimony of Robert M. Anderson.)

A. I didn't say I never run out of money; I said not very often.

Q. You were a very fortunate student. Mr. Anderson, one final question, in this stipulation referred to, the October '51 stipulation, pages 45 and 46, you referred to the manner in which you expended your money, you would pay for things yourself, or he would give you the money and you would buy it, is that the idea?

Mr. Lewis: Just a minute.

A. What are we talking about?

Q. To refresh your recollection, referring you to page 44 of the deposition of '45, you refer there to the use of these withdrawals, these alleged partnership withdrawals? A. Yes.

Q. Could you state briefly for the court the manner in which the withdrawals were made and the use then that they were put to?

A. Well, starting with when I went to college usually before I went to school I made an estimate of what I was going to need for the quarter, whether it was three or four hundred dollars, whatever it happened [280] to be or maybe \$25.00, and I told my dad what I needed and he would write me a check and charge me with that amount against my account.

Q. And you used that money for your—I am re-stating now but to clarify finally—you used that money to pay your college tuition, your books, your necessaries and clothes while in college, is that a correct statement?

(Testimony of Robert M. Anderson.)

A. It covered the majority of it, yes. I may have received money from his own personal account as a bonus or Christmas present or something but as a general rule the money that was drawn from either his account or the A. E. Anderson & Son account was charged against me in this book.

Mr. Bowen: No further questions.

ROBERT M. ANDERSON

Redirect Examination

By Mr. Lewis:

Q. Mr. Anderson, counsel for the Government asked you if you attended a training camp in '47. I think you said yes.

A. It was in '47.

Q. You testified you thought it was in '47. I don't think he asked you how long you were there. Would you state how long you were there? [281]

A. I believe it was six weeks from the day I left until the day I got back.

Q. Was that the only time you attended training? A. That is correct.

Q. And when was that? I mean during what part of the year?

A. Well, I left about around the middle of June sometime and I was back in time for harvest.

Q. In time for harvest? A. Yes, I was.

Q. Is there slack time normally in between the cultivation work in the spring for the crop for the year following and the start of the harvest?

(Testimony of Robert M. Anderson.)

A. Sometimes there is and sometimes there isn't.

Q. Is that the time while you are away sometimes in the slack work?

A. If there is slack time, it may be preceding harvest or it might be after harvest.

Q. This particular year Noel J. was there to help out, was he not? A. Yes.

Mr. Lewis: That is all.

The Court: Call the next witness.

Mr. Lewis: If the court please, that is all of our witnesses. There is a stipulation in the record, if the court please, that I would like to have introduced and given an exhibit number. I think there will be no objection. [282]

The Court: What is the stipulation?

Mr. Lewis: The stipulation refers to several things. It sets forth the amount of the deficiency tax and I won't go into too much detail but in general it does that, and what was paid that year, and then it ends up, and this is the particular part I would like to have to have in the record too and that is the reason that we, that the plaintiff asked for the stipulation. There were payments made by members of the family for taxes on the partnership for '45, of course, as the court knows, and until when the assessment was made, and we paid the amount of the tax under our protest. And then after they brought this suit, of course, the money that was paid to the other members of the partnership would of necessity be returned and it has been returned to them. And this stipulation covers that

point that if the decision should go in favor of the Government a certain thing would happen; if it goes in favor of the plaintiff a certain thing would happen with reference to that.

Mr. Angland: You mean if the plaintiff won this case, the plaintiff would have a refund coming from the Government, and the other three, Noel Anderson, Jr., Robert Anderson and Agnes Anderson would all have adjustment of returns. [283]

Mr. Lewis: That is right and it would have to be credited on the judgment that he may secure.

The Court: What about it? Any objection to it?

Mr. Angland: No objection.

The Court: Very well, it may be marked as an exhibit and numbered in the case.

Mr. Lewis: If the court please, I want to be absolutely sure before we rest that we understand each other about the exhibits. We have an agreement that we may withdraw any original exhibits and have them copied or photostated and certified, too; if photostated, they need not be certified, too, and the original exhibits might then be withdrawn, and I want that to be sure to include all the exhibits. The agreement we had included the privilege on the part of either side to furnish certified copies. For instance, like the deeds, it is very easy to furnish certified copies; in fact, I have them right here ready to furnish. On others like the leases on the land we could do that, we would have to photostat them, and we would probably photostat a part of the record books or at least they

would be copied so we could get the books and copy them as a permanent record. Now is there any objection?

Mr. Angland: No objection.

Mr. Lewis: With that understanding the plaintiff rests. [284]

The Court: Now, gentlemen, how long do you figure it will take you to put in your case? Can you do it tomorrow forenoon?

Mr. Bowen: Easily, sir.

The Court: Well I think we better suspend and you can talk things over and you can put in your case tomorrow morning.

Mr. Bowen: I might say to the court that the defendant has a motion to make since the plaintiff is closed. I think that might just as well be made first thing in the morning before the Government puts in any evidence.

The Court: Very well, that is understood. Court will stand adjourned until 10:00 o'clock tomorrow morning. (4:45 p.m. 12/12/52). [285]

(Court resumed, pursuant to recess, at 10:00 o'clock a.m. on December 13, 1952, at which time all counsel and parties were present.

The Court: Good morning, gentlemen. Are you ready to proceed this morning? You have a motion you say?

Mr. Angland: Yes, your Honor.

The Court: Very well, present your motion.

Mr. Bowen: If it please the court, counsel for the defendant moves the court in accordance with

Rule 41(b) of the Federal Rules of Civil Procedure to dismiss the action upon the grounds upon the facts and the law the plaintiff has shown no right to relief.

The Court: Very well. I anticipated this motion and looked up some of the authorities. This is a rather unusual and rather a complicated case, a family partnership was recognized by the revenue department at the death of one of the partners, the original partners, and the ordeal of the probate of the estate and the length of time it took, and all that sort of thing, and all those complicated situations that have arisen, I have considered all that, and also some of the authorities which counsel have based their motion and I am going to overrule the motion. You may proceed with your defense, [286] gentlemen.

J. H. MORSE

was called as a witness for defendant, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Angland:

Q. Will you state your name, please?

A. J. H. Morse.

Q. Where do you live, Mr. Morse?

A. Fort Benton.

Q. What is the nature of your work in Fort Benton?

A. Cashier of Chouteau County Bank, and Agent for the Fort Benton Insurance Agency.

(Testimony of J. H. Morse.)

Q. And as Agent for the Fort Benton Insurance Agency did you have occasion to write insurance for Noel Anderson, the plaintiff in this case, in the year '45?

A. Our records of that, show that insurance was written in '45.

Q. You have in response to a subpoena brought with you the records? A. Yes, sir.

Q. Will you produce the records you have of insurance issued in the year '45? Now I will hand you what has been identified as Defendant's proposed Exhibit No. 41, Mr. Morse, and ask you whether or not that is one of the records of your Fort Benton Insurance Agency?

A. It is. [287]

Q. And it is a record that has been kept by you, accurately kept? A. It is.

Mr. Lewis: We object to the introduction of this.

Mr. Angland: I haven't offered it, Mr. Lewis.

Mr. Angland: I will at this time offer in evidence Defendant's proposed Exhibit No. 41 as Defendant's Exhibit No. 41.

Mr. Lewis: The objection is that it goes to this—this is apparently a record of insurance policy on grain in storage in the name of Noel Anderson.

The Court: What is the basis of your objection?

Mr. Lewis: On October 1, '45. The objection is it is too indefinite. It does not in any way describe whether he had the grain, whether it had grain with reference to the partnership or not. The

(Testimony of J. H. Morse.)

evidence in this case is there was other grain in storage carried over from the old partnership, and there is nothing here to indicate what grain it is, the grain of Noel Anderson & Sons.

Mr. Angland: We will go along there may have been insurance on the A. E. Anderson partnership if counsel has some evidence to show that firm insured grain. This is to show Noel Anderson did have insured grain in '45.

The Court: That would be a matter of [288] rebuttal?

Mr. Angland: Yes.

The Court: I see no reason why it shouldn't be introduced.

Q. (By Mr. Angland): Now, Mr. Morse, did you issue grain insurance to A. E. Anderson & Sons in the year '45?

A. Our records don't show that.

Q. Did you issue any grain insurance to Noel Anderson & Sons in the year '45?

A. Our records don't show that.

Q. Do your records show that you did in a subsequent year issue insurance to Noel Anderson & Sons? A. Yes.

Q. And when was that? You are going through quite a few sheets; maybe I had better break that down. Will you state whether or not in the year '46 you issued grain insurance to Noel Anderson & Sons? A. No.

Q. Did you issue grain insurance policy to Noel Anderson in the year '46?

(Testimony of J. H. Morse.)

A. According to our records it was issued in the name of Noel Anderson.

Q. It was issued in the name of Noel Anderson?
A. Yes.

Q. And in the year '47 what do your records show as to the issuance of grain insurance?

A. The same as '46. [289]

Q. The same as in '46? A. Yes.

Q. It was issued to Noel Anderson?

A. Yes.

Q. And what about the year '48, did you issue grain insurance that year?

A. The same as the previous years.

Q. To Noel Anderson? A. Yes.

Q. According to the policy, is that right?

A. Yes.

Q. And in '49 what do your records show with reference to the issuance of grain insurance?

A. It was issued to Noel Anderson & Sons.

Q. Now, Mr. Morse, as cashier of the Chouteau County Bank and in response to a subpoena you have brought with you the records of the Chouteau County Bank, have you? A. I have.

Q. Defendant's Exhibit No. 41 shows a premium due of \$112.50 for the insurance of 15,000 bushels of grain in storage. Do you find in the bank accounts of the Anderson family, one of the accounts—they have been stipulated here by stipulation—do they show that a check for payment of an amount of \$112.50 was made on or about November 1st, '45,

(Testimony of J. H. Morse.)

the date on which this item appears to have been paid? It is marked [290] as of that date on Defendant's Exhibit 41.

Mr. Lewis: We object on the ground that he hasn't sufficiently identified it either with this exhibit or with the plaintiff in the case.

Mr. Angland: Well I can get at it in another way, your honor. I will withdraw the question.

Q. In the year '45, Mr. Morse, was there an account carried in the Chouteau County Bank in the name of Noel Anderson & Sons?

A. In '45?

Q. Yes. A. No, there wasn't.

Q. Was there an account in the Chouteau County Bank in the name of A. E. Anderson & Sons?

A. There was.

Q. Now will you look please at that record, that bank record for the year '45 and state whether or not you find that a check was issued on or about November 1st, '45, for the sum of \$112.50?

A. There was no charge on A. E. Anderson & Son for amount of \$112.50.

Q. The A. E. Anderson & Son account does not appear to have been charged for an item in that amount? A. No. [291]

Q. Would you carry on? Did you have an account in the name of Noel Anderson in '45?

A. Just Noel Anderson, no.

Q. Did you have an account, a joint account in the name of Noel Anderson and Agnes Anderson in the year '45? A. Yes, for '45.

(Testimony of J. H. Merse.)

Q. Now will you look please at that record and state whether or not on or about November 1st, '45, the date upon which Defendant's Exhibit No. 41 appears to have been paid you find that account charged with an item in the amount of \$112.50?

Mr. Lewis: We object, if the court please, on the ground that the check itself would be the best evidence. There may, to illustrate what I mean by that, there may have been a check written to somebody else for that amount. It isn't identified at all in payment of this.

Mr. Angland: Will you produce the check then, Mr. Lewis?

Mr. Lewis: I haven't any here.

Mr. Angland: You don't have it here?

Mr. Lewis: No.

Mr. Angland: You don't know whether or not it is available? [292]

Mr. Lewis: No, I don't. I haven't the slightest idea.

Mr. Angland: Well this is the bank record we submit, your honor, and it certainly tends to prove——

The Court: Well perhaps the plaintiff—inquire of the plaintiff whether the plaintiff can produce it, whether or not he knows where it is.

Mr. Lewis: I don't think he can because I am sure we have no bank records.

The Court: Have you inquired right now on this matter under consideration?

(Testimony of J. H. Morse.)

Mr. Lewis: He says he has none here but he has at home.

Mr. Angland: I don't like to unduly delay the matter but I guess we will have to if the court sees fit.

The Court: I will overrule the objection and admit this testimony in reference to the check if you can supplement it and identify it so you know exactly what it refers to. The way it stands now it does appear to be rather indefinite. There might have been——

Mr. Angland: I think our position on that would be this, your Honor; the account, the exhibit shows a charge to the assured, Noel Anderson; the charge at the bank to the Noel Anderson and Agnes Anderson account is in a like amount; it certainly tends to prove—— [293]

Q. (By Mr. Angland): Isn't that the situation, Mr. Morse? A. Yes, sir.

Q. Could you find that check? A. Yes.

Q. What date?

A. There is a charge on November 1st, '45 for \$112.50.

Mr. Angland: Now, your Honor, this exhibit appears to have been paid on that very date.

The Court: Very well, I will take your word for it. That appears to identify it to that extent any way. It may stand.

Mr. Angland: It is consistent. In order to have the proof clearly considered, your Honor, as I say I don't like to delay this matter and ask for a recess

(Testimony of J. H. Morse.)

but I do feel the plaintiff should produce that check as he states he does have it, if Mr. Lewis wishes to take further evidence next week sometime when that check may be produced.

Mr. Lewis: Of course, I don't know enough about it at this time.

The Court: Well we will let the record stand as it is now and see what you can make out of it when the situation is discussed by both sides. Go ahead.

Mr. Angland: You may cross-examine. [294]

J. H. MORSE

Cross-Examination

By Mr. Lewis:

Q. Mr. Morse, will you state what this insurance is regarding insurance policies as to names that they were written in or whether at times you may write policies for a firm in the name of one individual or write insurance on property in the name of one individual?

The Court: That is rather an involved question. I think you better make it a little more definite and short.

Mr. Lewis: Very well. Strike the question.

Q. Mr. Morse, will you state whether or not you often write insurance on grain, for instance, in the name of one individual when it might be grain for a partnership or a corporation?

Mr. Angland: Well, now, just a minute. To

(Testimony of J. H. Morse.)

which I will object, your honor; the question in issue is what was done in this case, not what the insurance was.

The Court: I will sustain the objection.

Q. Mr. Morse, do you pay very much attention in general to particular names in insurance policies?

Mr. Angland: That is objected to, your Honor, as improper cross-examination.

The Court: Yes.

Mr. Lewis: That is all. [295]

L. G. WRIGHT

was called as a witness for defendant, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Angland:

Q. Will you state your name, please?

A. L. G. Wright.

Q. Where do you live, Mr. Wright?

A. Fort Benton.

Q. And what official position, if any, do you have at Fort Benton, Montana?

A. Chouteau County Treasurer.

Q. Mr. Wright, as Chouteau County Treasurer you have custody of the Chouteau County records showing payment of taxes to Chouteau County?

A. I do.

Q. And in response to a subpoena have you examined your records with reference to the assess-

(Testimony of L. G. Wright.)

ments made on Noel Anderson, Noel Anderson & Sons, and A. E. Anderson and Sons for the year '45?
A. I have.

Q. What do your records show with reference to the assessment of real estate in the year '45?

A. For the real estate—you don't want the description? [296]

Q. No, it isn't necessary I don't think. I think we can dispense with that.

A. Consisting of 5,793 acres was assessed in the name Andrew E. Anderson in '45.

Q. Andrew E. Anderson in '45? A. Yes.

Q. Did you find a record of any real estate assessed to Noel Anderson and Sons in the year '45?

A. There was no real estate assessed to that partnership in '45.

Q. Was there any personal property assessed to Noel Anderson & Sons in the year '45?

A. No.

Q. Was there any personal property assessed to Noel Anderson in '45? A. No.

Q. Now with reference to the year '46 was there assessment of real estate to Noel Anderson & Sons?

A. No.

Q. Was there an assessment of personal property to Noel Anderson & Sons? A. No.

Q. Was there an assessment of personal property to Noel Anderson? A. No.

Q. What name was the personal property assessed in? A. A. E. Anderson & Son. [297]

Q. And that is for the year '46? A. '46.

(Testimony of L. G. Wright.)

Q. I don't believe I asked you the nature of the assessment in the year '45 on personal property, to whom was that assessed?

A. That was assessed to A. E. Anderson & Son in '45.

Q. And you have no record of the assessment of personal property or real property to either Noel Anderson or Noel Anderson & Sons in either years '45 or '46?

A. There was certain real estate, a town lot assessed to, no, that is right in '45; there wasn't on '46.

Q. In '45 there was no assessment to either Noel Anderson or Noel Anderson & Sons either on realty or personal property? A. In '46?

Q. In '45? A. No.

Q. In '46 what is the situation, Mr. Wright?

A. Well, the personal property assessed to Noel Anderson & Son in '46.

Q. And the other real estate you state was also assessed to A. E. Anderson?

A. Andrew E. Anderson. [298]

Q. Andrew E. You referred I believe to a city lot there was an assessment on, and was that the year '46?

A. No, there wasn't anything in '46.

Q. So your records show nothing in '46 by way of assessment to either Noel Anderson or Noel Anderson & Sons? A. No.

Mr. Angland: You may cross-examine.

L. G. WRIGHT

Cross-Examination

By Mr. Lewis:

Q. Mr. Wright, are the two assessments there which you referred to as the land and personal property separate assessments?

A. Yes, they are.

Q. Will you state, Mr. Wright, what the policy is or basis is the person to whom the property is assessed?

Mr. Angland: Just a minute, your Honor. Policy again, we would object to any testimony as to policy.

The Court: Sustain the objection.

Q. If you know, when the assessor makes the assessment of the real estate do you know whether or not it is made in the name of the record title holder of the property? [299]

A. Yes.

Mr. Lewis: That is all.

CARLEY MORGER

was called as a witness for defendant, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Bowen:

Q. Will you state your name, madame?

A. Carley Morger.

Q. Where do you live?

A. In Fort Benton.

Q. Are you employed in Fort Benton?

A. Yes, I am.

(Testimony of Carley Morger.)

Q. What is the nature of your job there?

A. I am Secretary of the Chouteau P. & A. office.

Q. As Secretary of the Triple A office, is it?

A. It is now called P. & A. office.

Q. It was called the Triple A office?

A. Correct.

Q. As Secretary of the P. & A. office, Mrs. Morger, are you the custodian of the records?

A. I am.

Q. You are here today in response to a subpoena by the defendant, are you not?

A. That is correct. [300]

Q. And you were directed to bring all records of the Anderson family relative to the year '45 in regard to farm conservation program work, isn't that correct?

A. That is correct.

Q. Do you have those records with you?

A. I have.

Q. Will you turn, Mrs. Morger, to your records of the Anderson family firm operation in '45 relative to their participation in the '45 agricultural conservation program? Do you have such a record?

A. I have the record, yes.

Q. In whose name is that record carried as the operator?

A. A. E. Anderson & Son.

Q. A. E. Anderson & Son? A. Yes.

Q. And what does that record purport to be?

A. It is the '45 agricultural conservation pro-

(Testimony of Carley Morger.)

gram farm plan what their intended practices under this program would be for '45.

Q. And who signs in the name of the operator there?

A. It is signed A. E. Anderson & Son by Noel Anderson.

Q. And dated? A. March 19th, '45. [301]

Mr. Bowen: We offer in evidence Defendant's Exhibit 42.

Mr. Lewis: No objection.

The Court: It may be received in evidence.

Q. (By Mr. Bowen): Mrs. Morger, turning next to any Anderson family farm operations for '45, do you have any record of an Anderson family farm participation in the grazing and land management plan? A. I have.

Q. And in whose name?

A. A. E. Anderson, c/o Noel Anderson.

Q. C/o Noel Anderson? A. Yes.

Q. And what does that grazing plan comprise?

A. It comprises the feed resources and inventory of that, inventory of the livestock, and also the practices, intent of practices for '45.

Q. And in whose name as operator is that plan signed?

A. A. E. Anderson & Son by Noel Anderson.

Q. And dated?

A. 5th Month, 31st day, '45.

Q. Now attached to that plan is a card statement, a postal card, Mrs. Morger?

(Testimony of Carley Morger.)

A. That is correct. [302]

Q. And what does that postal card purport to be?

A. It is a card sent to the Chouteau County A.A.A. office by Noel Anderson, and it says that he intended to perform a practice and he had kept it. It was a stock water dam.

Q. And that is signed by whom?

A. A. E. Anderson & Son by Noel Anderson.

Mr. Bowen: I offer Defendant's Exhibit 43 and 44 in evidence, your honor.

Mr. Lewis: No objection.

The Court: Very well, it may be received in evidence.

Mr. Bowen: To clarify the record, I don't believe I stated that we offered Defendant's Exhibit 42 in evidence. It was admitted without such an offer.

The Court: Very well. No objection?

Mr. Lewis: No objection. That was the one before these?

Mr. Bowen: Yes.

The Court: It may be received in evidence.

Q. (By Mr. Bowen): Now turning again to the year '45, Mrs. Morger, do you have any record of participation by the Anderson family firm in an agricultural conservation plan farm and ranch details activity? A. I have. [303]

Q. Do you have that record with you?

A. I have.

Q. In whose name is that record listed as operator?

(Testimony of Carley Morger.)

Mr. Lewis: Just a minute. If the court please, may we have the year first so we can keep track of it?

Mr. Bowen: I just stated the year '45.

A. Noel Anderson.

Q. Noel Anderson? A. That is correct.

Q. And what does that purport to be?

A. It is a profile. It is a profile of the damsite. It says it is a new water dam, a stock water dam, and it gives the location where it was to be built.

Q. And it is approved in the year '45?

A. That is correct.

Q. By whom, please, ma'm?

A. Ray Fisgbaugh, who was Chairman of the Chouteau A.C.A. at that time.

Q. And the date it was approved?

A. July 4th, '45.

Mr. Bowen: That is all.

Mr. Lewis: If the court please, may I inquire of the witness? [304]

Cross-Examination

By Mr. Lewis:

Q. Mrs. Morger, do you know whether or not A. E. Anderson & Sons had been under the Triple A program or A. & P. program for some time before the year '45?

A. I do not know. I could not tell you.

Q. You don't have that record? If A. E. Anderson & Son had been under the program in any branch you know about in your office and Mr. Noel

(Testimony of Carley Morger.)

Anderson or anyone else hadn't come to the office in the latter part of '44 when you were planning this program or the early part of '45, would you have carried it on in the same name?

Mr. Bowen: Objection, your Honor. His statement is if something had been done in '44. This young lady has a subpoena; it is a subpoena directed to the year '45, and being in the nature of a highly technical question its relevancy is objected to for purposes of clarifying any misunderstanding here. It appears from that exhibit on the face of it that the new dam had been built and was approved in '45 and you might assume from that they brought out in their testimony it was begun in '44. We could agree that was the year.

Mr. Lewis: That it was begun in '44?

Mr. Bowen: Planning stage in '44.

Mr. Lewis: Will you agree this was in the [305] planning stage in '44?

Mr. Bowen: Yes.

Mr. Lewis: No objection.

The Court: It may be received in evidence when it is offered.

Mr. Bowen: We offer Defendant's Exhibit No. 45 in evidence.

Redirect Examination

By Mr. Bowen:

Q. Now that it appears, Mrs. Morger, that the Anderson family was participating in a conservation program in the year '45, do you have a record

(Testimony of Carley Morger.)

of payment of Government subsidies in the year '45 too for their participation in the conservation program? A. I have.

Q. And in whose name is that particular record?

A. A. E. Anderson & Son.

Q. And subscribed to as operated by whom?

A. By Noel Anderson & partners.

Q. By Noel Anderson and the date of that record? A. 4/9/46. [306]

Q. So that payment for and participation in '45 was made in '46, is that right?

A. That is correct.

Q. And to the operator Noel Anderson?

A. That is correct.

Mr. Lewis: May I inquire?

Recross-Examination

By Mr. Lewis:

Q. Mrs. Morger, when this is made up and sent out to Mr. Anderson, for instance, is the name of A. E. Anderson & Son typed in here on this, is it Defendant's Exhibit No. 46, on this exhibit part of which before it goes out? A. That is correct.

Q. And was it, Mrs. Morger, on Exhibit 46? In other words, it goes to the producer or whoever he may be only to sign?

A. Unless he should come in the office and tell us how it is to be typed on it.

Mr. Bowen: We offer Defendant's Exhibit 46 in evidence, your Honor.

Mr. Lewis: No objection.

(Testimony of Carley Morger.)

The Court: It may be received in evidence. [307]

Redirect Examination

By Mr. Bowen:

Q. Turning next, Mrs. Morger, those subsidy payments to the Anderson family in '46, do you have any record? A. I have.

Q. And the name of the operator appears on that record as whom?

A. A. E. Anderson & Son.

Q. And subscribed to by whom?

A. Noel Anderson.

Q. A. E. Anderson & Son and subscribed to by Noel Anderson? A. Yes.

Q. And the date? A. 3/27/46.

Mr. Bowen: We offer in evidence Defendant's Exhibit No. 47.

Mr. Lewis: No objection.

The Court: It may be received in evidence.

Q. (By Mr. Bowen): Finally, Mrs. Morger, as you have stated the subpoena directed you to bring all records relative to operations of the Anderson family firm for the year '46 and '46, is that correct?

A. Yes. [308]

Q. Did the subpoena direct you to do that?

A. Yes, sir.

Q. In your search of the records did you find any records relative to the Noel Anderson & Son partnership for the year '45 or '46?

A. I did not.

Mr. Bowen: No further questions.

(Testimony of Carley Morger.)

Recross-Examination

Q. Mrs. Morger, directing your attention to Defendant's Exhibit 44, which is the grazing land management plan, will you state what time of the year you started your work in the office in drawing up papers like this?

A. Chouteau County does not have a program such as this any more and I am not familiar with when they would have done this type of work.

Q. You are not familiar with that?

A. No, I am not.

Q. Normally when does the A.C.A. or the plans whatever they are in the office, normally when do they start with the papers? [309]

Mr. Angland: That is objected to again, your Honor, normally what they did this witness does not know what was done in '45 and states that.

Mr. Lewis: I will change the question if the court please.

Q. When did you start to work?

A. In May '50.

Q. May, '50? A. I believe that is right.

Q. Do you know? A. It was May, '51.

Q. Do you know, Mrs. Morger, what plans were in the office since you started to work there?

Mr. Angland: Just a minute.

The Court: What is that?

Q. What plans were in operation under the P. & A. program since you started to work there?

(Testimony of Carley Morger.)

Mr. Angland: I will object to that, your Honor, in that it has nothing to do with it, it is irrelevant and has to do with matters that have been handled since May of '51. Is that when you went to work?

A. Yes.

Mr. Angland: It is remote and wouldn't tend to prove or disprove any issue in the case.

The Court: I think so.

Mr. Lewis: All right, I think we can get at [310] it in another way.

Mr. Lewis: No further examination.

SAM CHAPMAN'

was called as a witness for defendant, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Bowen:

Q. Will you state your name, please?

A. Sam Chapman.

Q. Where do you live? A. Great Falls.

Q. Are you employed here in Great Falls?

A. I am.

Q. What is your business?

A. Office Manager, Greely Elevator Company.

Q. As Office Manager of the Greely Elevator Company are you the custodian of the company records? A. I am.

Q. You are here in response to a subpoena from the department to produce records for the year '45, are you not? A. I am.

(Testimony of Sam Chapman.)

Q. And that subpoena directed you to bring all records, did it not, of A. E. Anderson & Son, Noel Anderson, and all you have on Noel Anderson & Sons, is that correct?

A. That is correct. [311]

Q. And you were particularly directed to bring records of your stations, of your three stations in the Fort Benton area, isn't that correct?

A. That is correct.

Q. What are those three stations?

A. Loma, Fort Benton and Highwood.

Q. Those are the, having heard the testimony of these witnesses relative to the location of the Anderson family farm, can you conclude that these three stations serve the area of their farm? By that I mean are they in close proximity?

A. I doubt that Highwood would.

Q. You doubt that Highwood would be but Loma and Fort Benton would be related stations?

A. Right.

Q. Have you made a close check and inquiry of all your records so for the year '45 relative to operations and purchases and dealings with the Anderson family farm? A. I have.

Q. Have you summarized for purpose of recollection such dealings? A. I have.

Q. Do you have that summary with you?

A. I have a copy of the summary. [312]

Q. May I exchange and give you the original and I will take the copy. Turning to your first

(Testimony of Sam Chapman.)

entry in this summary, Mr. Chapman, what is the date of that entry please, sir?

A. January 10th, '45.

Q. And which records what transaction?

A. Sale of wheat.

Q. Sale to you of wheat, is that correct?

A. Yes, money paid to Mr. Anderson.

Q. And does this summary record the amount of that wheat?

Mr. Lewis: Just a minute. Do I understand it is for January?

Mr. Bowen: Yes.

Mr. Lewis: We object as not having anything to do with this case; that it couldn't be the '45 crop.

Mr. Angland: It doesn't have to be the crop, your Honor. It is property owned by the partnership, not what was the business they took over. That is what I understand of plaintiff's case attempting to explain to the court Noel Anderson & Sons took over from the A. E. Anderson & Son, so it doesn't make any particular difference. There isn't any question when the property was grown, it is disposition of the property.

Mr. Lewis: The evidence is clear that the '44 crop was the property of A. E. Anderson & Son; that is very clear from the evidence; there is nothing to dispute it. [313]

Mr. Bowen: It is also clear this taxpayer was a cash basis taxpayer in the year '45, and as a cash basis taxpayer he is accountable for income earned

(Testimony of Sam Chapman.)

and reported in that year, and not income earned on an accrual basis accounting.

Mr. Lewis: But it was reported in the A. E. Anderson return and not in the other one.

Mr. Bowen: For what it is worth, your Honor, I would like to continue this questioning.

The Court: For what?

Mr. Bowen: For whatever it may be worth as proof I would like to continue the questioning after this discussion, for any purpose that it may serve.

The Court: Well you are objecting to the question?

Mr. Lewis: That part of it. That item clearly on the face of it wouldn't go in.

The Court: Well that is a matter of argument. It may be material. We will see what he says about it. I will overrule the objection and it may go in.

Q. (By Mr. Bowen): And the amount of the check that was issued to Mr. Noel Anderson?

A. \$6,024.24.

Q. Then turning to your next entry, what is the date of that entry? A. April 15th, '45. [314]

Q. And the check that is issued—

Mr. Lewis: Just a minute. May I get my objection in, if the court please. We object to that item on the same grounds.

The Court: Overrule the objection.

Q. The check is issued on that date to what drawee, payee? A. Noel Anderson.

Q. And it was for what commodity?

A. Barley.

(Testimony of Sam Chapman.)

Q. And the amount? A. \$11.24.

Q. Now turning to your next entry, what is the date of that entry? A. August 13th, '45.

Q. And that was for the purchase of what commodity? A. Wheat.

Q. The check was issued to whom?

A. Mr. Lewis: What type of wheat?

Q. He wants to know what type wheat that was?

A. Winter wheat.

Q. And the check was issued to whom?

A. A. E. Anderson & Son.

Q. And the amount of that check?

A. \$5,174.19. [315]

Q. Now turning to the next entry re check issued to A. E. Anderson & Son, what is the date?

A. August 20, '45.

Q. And for what commodity?

A. Winter wheat.

Q. In the amount? A. \$1,441.45.

Q. And the amount of that check was? You have given then the cash and amount of wheat.

A. The amount of wheat 1,135 bushels.

Q. Turning next entry, what is the date of that entry? A. September 5th, '45.

Q. And there was further purchase of what commodity? A. It was a protein payment.

Q. Protein payment? A. Yes.

Q. To whom? A. A. E. Anderson & Son.

Q. In the amount in cash? A. \$561.54.

Q. And the next entry, Mr. Chapman?

(Testimony of Sam Chapman.)

A. September 21st, '45, protein payment, A. E. Anderson & Son.

Q. Check made to A. E. Anderson & Son?

A. Right, in the amount of \$17.45. [316]

Q. Let's continue down in this summary to the next item recorded there in '45; what is the date of that item?

A. August 17th, '45.

Q. Commodity purchased? A. Barley.

Q. A check issued to whom?

A. A. E. Anderson & Son.

Q. And the amount of that check?

A. \$133.79.

Q. And another entry on the same date, I believe, is that correct?

A. That is right.

Q. For the same commodity? A. Barley.

Q. To the same payee? A. It is.

Q. And the second entry payment was in what amount?

A. \$187.51.

Q. Then I take it from your summary, Mr. Chapman, that there were no transactions in the name of Noel Anderson & Sons in '45, is that correct, Noel Anderson & Sons?

A. That is correct. [317]

Q. Continuing, Mr. Chapman, to the year '46, what is your earliest entry for that year? May 18th?

A. May 17th.

Q. '46 and the purchase of what commodity and what amount?

A. That was redemption of Commodity Credit Loan.

Q. And for what amount of wheat?

(Testimony of Sam Chapman.)

A. 1,723 bushels of winter wheat.

Q. And the payee in that case was whom?

A. Commodity Credit.

Q. For whom?

A. For Noel Anderson wheat.

Q. And the amount of that check?

A. \$2,778.98.

Q. There was another entry that same date, I believe, wasn't there? A. Right.

Q. Being May 17th, '46? A. Right.

Q. And the nature of that entry?

A. That was also a check issued to Commodity Credit Corporation for 1,686 bushels of winter wheat.

Q. And for the benefit of whom?

A. It was identified as Noel Anderson wheat.

Q. In the amount? A. \$2,668.72. [318]

Q. Now continuing down this next entry in '46, that would be the third item from the bottom. What is the next entry? A. October 3rd, '46.

Q. And that was recorded purchase of what commodity? A. Winter wheat.

Q. Winter wheat and the check was issued to whom? A. Noel Anderson.

Q. And the amount of that check?

A. \$197.64.

Q. Continuing on down to the next item when is your first recordation of a transaction with Noel Anderson & Sons, if any, partners?

A. October 1st, '46.

Q. And what was the nature of that transaction?

(Testimony of Sam Chapman.)

A. Purchase of winter wheat.

Q. In what amount? A. 415 bushels.

Q. And the check was issued to whom?

A. Noel Anderson & Sons.

Q. Will you check and see; does that indicate who endorsed the check?

A. Signed endorsement Noel Anderson & Sons by Noel Anderson. [319]

Q. And the amount of that check?

A. \$728.90.

Q. Did your record and inquiry show any other purchase in the year '47 from the partnership of Noel Anderson & Sons? A. It did.

Q. In '46 now I am referring you to.

A. You said '47.

Q. In the year '46? A. No.

Q. No other purchase? A. No.

Q. I hand you Plaintiff's Exhibits 25 and 26, Mr. Chapman, and ask you to summarize, familiarize yourself with them just a minute. What do those two exhibits purport to represent to your knowledge?

A. Well the sale of wheat. Contract of sale of wheat.

Q. Can you tell by inquiring into what appears there who stored the wheat with you?

A. Noel Anderson & Sons.

Q. Where did you get that, Mr. Chapman?

A. Oh, wait a minute.

Q. That shows approval on behalf of Commodity Credit Corporation?

(Testimony of Sam Chapman.)

A. Stored for Commodity Credit. [320]

Q. It was stored for Commodity Credit?

A. Right, in our elevator.

Q. To refresh your recollection and to aid in your inquiry, if you would turn for a minute to your summary, Mr. Chapman, of dealings on May 17th, '46 we covered just now that there was a transaction with Commodity Credit Corporation for Noel Anderson, isn't that correct?

A. That is correct.

Q. Then would it appear from that that the grain when brought in was brought in by Noel Anderson?

Mr. Lewis: That is objected to as calling for a conclusion of the witness; he can only testify from his records.

Mr. Bowen: I am asking him to look at his records and see if he did.

A. The check was issued to Commodity Credit Corporation, or the checks I should say.

Q. Right.

A. For the redemption of a loan on Anderson wheat. Our elevator agent designated this as Anderson wheat for office purposes; as to whether it was Noel Anderson & Son or Noel Anderson I wouldn't say.

Q. You couldn't tell from that record?

A. It was Anderson wheat. In other words, Anderson did not receive that money from us. [321]

Q. It went direct to Commodity Credit?

A. Yes.

(Testimony of Sam Chapman.)

Q. Do your records show a payment other than to Commodity Credit?

A. No; it shows on the duplicate only.

Q. Now I refer you to that duplicate, Mr. Chapman, and do I understand you correctly that this entry indicates nothing to you?

A. Which entry is that?

Q. That entry right here "bought of"?

A. Only that it was Anderson wheat.

Q. Well what does that entry read?

A. Noel Anderson.

Q. It was bought of Noel Anderson according to your entry there? A. That is right.

Q. The exhibits that you have there, may I see one of them. Plaintiff's Exhibit 25 refers to receipt at the warehouse of 1,723 bushels of wheat; this Defendant's Exhibit 49, what does it show as to amount of wheat? A. 1,723 bushels.

Q. And the date of that exhibit?

A. May 17, '46. [322]

Q. May 17, '46. Can you with your knowledge of the operation of storage and payment for grain identify the storage and payment for the wheat by you, payment being made to Commodity Credit with this contract?

Mr. Lewis: Just a minute. If the court please, I wonder if we couldn't have both exhibits go into the record; that is very important. I think the number of the exhibits should be given.

Mr. Bowen: We have here Defendant's Exhibit 39 and Plaintiff's Exhibit 25.

(Testimony of Sam Chapman.)

A. I can identify these two as the same.

Q. I didn't get your answer.

A. I can identify these two as the same.

Q. Recording the same entry and referring now to Defendant's Exhibit 48 and Plaintiff's Exhibit 26, can you make the same identification?

A. I can.

Q. That is the same wheat then the record here? A. That is the same wheat.

Q. In other words, the same wheat?

A. Yes.

Mr. Bowen: I offer Defendant's Exhibits 48 and 49 in evidence, your Honor.

Mr. Lewis: There is no objection.

The Court: They may be received. [323]

Q. (By Mr. Bowen): Referring again to these exhibits and to your summary, Mr. Chapman, can you tell when and in whose name you received the wheat referred to at your elevator the wheat referred to in Plaintiff's Exhibit 25 and Plaintiff's Exhibit 26; can you tell us when you received that wheat and from whom? Also referring to your summary of dealings with Commodity Credit Corporation on or near that date? In other words, it is clear that the wheat had to be brought in by some producer, isn't that right? A. That is right.

Q. And have to be stored with you in the name of some producer before a loan could be procured from Commodity Credit Corporation, isn't that correct? A. That is correct.

(Testimony of Sam Chapman.)

Q. Can you tell from either of those two exhibits, Plaintiff's Exhibits 25 and 26 and Defendants's Exhibits 48 and 49 from whom you first got the wheat and stored it?

A. Noel Anderson.

Q. Noel Anderson.

Mr. Bowen: No further questions. [324]

Cross-Examination

By Mr. Lewis:

Q. Mr. Chapman, of course, in your testimony here you are testifying only from the records that you have there, is that right? A. That is all.

Q. And you wouldn't presume to say that because the name of Noel Anderson was on there that it was not part of the family wheat or family partnership wheat of A. E. Anderson & Sons, say?

Mr. Angland: Just a minute. Your Honor, he is presuming to say something. The exhibits have been admitted in evidence; they speak for themselves.

The Court: Yes. Sustain the objection.

Q. Will you refer, Mr. Chapman, to something you said about redemption certificates when you were being questioned. I don't know what it is. I want you to explain it to me. You used the term redemption certificate.

A. A loan was taken out on this wheat.

Q. Which wheat will you please tell me now?

A. On the two transactions of May 17th, '46 for Commodity Credit Corporation. As I understand it

(Testimony of Sam Chapman.)

a farmer may elect to take a loan through the Commodity Credit Corporation on wheat and in order for this wheat to be released to us the Commodity Credit Corporation loan has to be satisfied; for that reason [325] the checks were issued to the Commodity Credit Corporation.

Q. Now, Mr. Chapman, are you familiar with the bonus program for that particular time?

A. I am not.

Q. Well, I will ask you to refer to Plaintiff's Exhibits 25 and 26 and look at the bottom of the two exhibits and state whether or not that does not have to do with the bonus program that was on at that time and not a loan program?

Mr. Angland: We will object to that as being improper cross-examination. The witness has stated that he was not familiar with the bonus program in '45. If the exhibits show something, then the exhibits speak for themselves.

The Court: Yes, I think so.

Mr. Lewis: I don't want to argue with the Court. He has stated definitely there was a loan.

The Court: Well it will have to stand. If you have some rebuttal testimony to show it wasn't, if you think it is important, you can do that.

Q. You said you were not familiar with the bonus program so you don't know what that was?

A. It was a loan; it was a redemption of a loan and that is all I know.

Q. That is what you think these are?

A. Yes.

(Testimony of Sam Chapman.)

Mr. Lewis: That is all. [326]

Mr. Bowen: No further questions.

The Court: We will take a recess. (11:15 a.m.)

(Court resumed, pursuant to recess, at 11:30 o'clock a.m., at which time all counsel and parties were present.)

The Court: Call your next witness.

Mr. Bowen: That closes our case, your Honor.

The Court: Rebuttal?

Mr. Lewis: Yes, a little, if the court please. Mr. Anderson.

The Court: Proceed.

NOEL ANDERSON

plaintiff, resumed the stand and testified as follows:

Direct Examination

(Rebuttal)

By Mr. Lewis:

Q. Mr. Anderson, you heard the testimony of Mr. Chapman, with reference to grain sales, and also testimony of Mrs. Morger with reference to the P.M.A. practices? A. I did.

Q. You are familiar with what was testified to by each of these witnesses?

A. I am, thoroughly. [327]

Q. Will you please state whether or not these practices and this testimony related to the period that you call the transition period?

A. It does.

(Testimony of Noel Anderson.)

Q. From the old partnership to the new?

A. That is correct.

Q. I direct your attention, Mr. Anderson, to Plaintiff's Exhibits 25 and 26 and Defendant's Exhibits 48 and 49, and remind you of the statement of Mr. Chapman as to all four exhibits have to do with a loan, will you state whether or not there was a loan at that time with Commodity Credit Corporation by you either as A. E. Anderson & Sons or Noel Anderson and Sons?

A. There was no loan of any kind carried with this wheat.

Q. Now will you explain to the court what that transaction was? It is rather complicated and I would like to have you tell what happened there in as few words as possible.

A. If I remember correctly, in the spring of '46 there was a demand for wheat. I believe it was for export purposes. The Government through the Commodity Credit Comparison made an appeal to farmers who had farm-stored wheat to deliver their wheat at this time and in turn they would be paid a bonus. If I remember correctly, this bonus was to be 30c per bushel in addition to the market price of the wheat at the time [328] the farmer elected to determine the market price on that wheat.

Q. What did you do with reference to that wheat? Tell the court what happened? Where was the wheat? What did you do with reference to it?

A. Noel Anderson & Sons had considerable wheat stored on the farm.

(Testimony of Noel Anderson.)

Q. From what crop?

A. From the '45 crop. And in accordance with this demand this wheat was hauled to the elevator in May of '46.

Q. And that would be the Greely Elevator in this instance?

A. There are two contracts here with the Greely Elevator Company and one with General Mills. Inc.

Q. Now when you deliver the wheat how is it after you deliver the wheat, did you sign Plaintiff's Exhibits 25 and 26?

A. Exhibit No. 25 was signed on May 23rd, '46, and Exhibit 26 was signed on May 23rd, '46.

Q. Now was there any loan then connected with any of these exhibits?

A. There was no loan connected with this wheat.

Q. All that was then as you explained a bonus proposition? A. Correct. [329]

Q. And carried over a period of several months?

A. That is correct.

Q. Mr. Anderson, I direct you particularly to Defendant's Exhibit 42 and to the first line; what is the first line of the description?

A. The first line designates "practice D 5, field strip cropping."

Q. Mr. Anderson, will you tell the court what that practice is and whether it touches over more than one year, and, if so, which years would be involved in that item?

A. In the practice of field strip cropping as far

(Testimony of Noel Anderson.)

as the farming is concerned alternate strips of crop or of land, cultivated land are cropped each year. I mean by that that in one year you will have that certain strip in crop and the next year it will be summer fallow.

Q. Now can you state whether or not that particular item would refer to '44 and '45 both?

A. As far as the field strip cropping is concerned it would.

Q. And if something occurred in '44, it would have something to do with the A. E. Anderson & Son—

A. It certainly would.

Q. Records?

A. It certainly would. [330]

Q. Now directing your attention to the second line denoted "reservoir," I will ask you whether the item "reservoir" on Defendant's Exhibit 42 and Defendant's Exhibit 43 and Defendant's Exhibit 44 have reference to the same practice of P.M.A., or whatever we call it—they change their numbers so often—conservation practice this would be?

A. Yes, they have reference to the same practice.

Q. Now what occurs when you do this sort of work; are any payments received by the person who does this conservation work?

A. Yes, we receive payments for that work.

Q. And you do it under two offices really part of the conservation office?

A. The application is made through the P.M.A. office and the technical work you might say is done through the Soil Conservation office.

(Testimony of Noel Anderson.)

Q. And Deefndant's Exhibit 45 would be the Soil Conservation Offices as part?

A. That is correct.

Q. And the other two would be the A.C.A. Office at that time, now P.M.A.?

A. That is correct.

Q. Now when you had any occasion to enter in the books of your records any payments, state what you did with reference to segregation, if any, between the reservoir, for instance, and stripping and so forth, [331] whether there was segregation between the two accounts on your books? I mean by two accounts between A. E. Anderson & Son and Noel Anderson & Sons?

Mr. Angland: Objected to, your Honor. Those books are in evidence and speak for themselves on that point.

The Court: Have you got a record of that?

Mr. Lewis: I don't think we can go into that in detail and I don't think it is important enough.

The Court: Ask him if he segregated the account?

Q. (By Mr. Lewis): Did you segregate it in this transition period before you made your income tax returns whatever belonged to A. E. Anderson and whatever belonged to Noel Anderson & Sons?

A. The practices that were performed in '45 were done under the Noel Anderson & Sons partnership and the payment for the same was entered as payments to——

Q. If it was payable out for construction of the

(Testimony of Noel Anderson.)

dam, it would be an expense that you would enter?

A. That is correct.

Q. And if it was a receipt from the Government for part of the refund, that would be entered as a receipt, would it? A. Yes.

Q. And it was? A. It was. [332]

Q. Now just referring to Defendant's Exhibit 47, Defendant's Exhibit 44 and Defendant's Exhibit 46, with the exhibits we have previously referred to, Defendant's Exhibits 42, 43 and 45, will you please state whether or not during the time that you signed any of those exhibits that you did sign whether or not you were doing business still under the name officially of A. E. Anderson & Sons?

A. That is correct.

Q. Now they are all then before May 1st, '46?

A. That is correct.

Q. At which time you testified the Noel Anderson account was opened in the bank?

A. That is right.

Q. And the exhibits which bear the name, the signature of Noel Anderson and Sons, Defendant's Exhibits 25 and 26, were signed Noel Anderson & Sons, were they? A. Yes.

Q. And on the date stated therein?

A. That is correct.

Q. May 23rd, '46? A. '46.

Q. After you had established the new bank account and were getting the matters changed over into the new partnership?

A. That is correct. [333]

(Testimony of Noel Anderson.)

Q. Now when during this transition period, Mr. Anderson, did you continue to deal in general with the same, did you or did you not continue to deal with the same, generally the same business houses and the Government offices the farmer ordinarily deals with, that you had been dealing with for some years before under the old partnership?

A. We did.

Q. And during that period of transition did you or did you not specifically tell the business men and these offices that you had transferred to a new partnership at that time, did you say anything about it?

A. No, I didn't make the fact known.

Q. And, of course, generally speaking, Mr. Anderson, did any of these papers you signed prior to May 1st, '46 might have been signed by the old partnership name?

Mr. Angland: Just a minute. The papers speak for themselves.

The Court: He can explain it.

Mr. Lewis: I will withdraw it.

The Court: All right.

Q. You heard the testimony of Mr. Chapman, Mr. Anderson, about the sale of some of the wheat on the list that he testified to. Now as to those sales or references prior to—well, the two items here as of January 10th, '45 and April 15th '45, state what year that wheat or crop would have to be? [334]

A. That would have to be '44 crop.

(Testimony of Noel Anderson.)

Q. And would probably be on the crop of whom?

Mr. Angland: Just a minute. He said "probably."

Mr. Lewis: I will withdraw that.

Q. What would it—who would own that crop?

A. That would be crop on the old partnership of A. E. Anderson & Sons, one-half of which belonged to me and the other half belonging to the A. E. Anderson estate.

Q. I call your attention to the item "10/3/46" marked "Noel," and the item "1/10/47" marked "Noel," did you authorize or did you or did you not authorize the Greely Elevator to put any of this wheat in your name at that time?

Mr. Angland: Just a minute. That is objected to, your Honor. He is attempting by parole evidence to alter the terms of a written statement now in evidence existing between Noel Anderson, Commodity Credit Corporation and Greely Elevator Company.

Mr. Lewis: No, if the court please, I think Mr. Angland is in error; this is not in evidence.

The Court: It isn't?

Mr. Lewis: No, it isn't introduced in evidence.

The Court: He may state whether or not he authorized the use of Noel Anderson or not.

Mr. Lewis: Read the question.

(Question read.)

Mr. Angland: Same objection. [335]

The Court: Well let him answer the question.

(Testimony of Noel Anderson.)

Did you or did you not? Do you remember whether you did or not?

A. I don't recall that I did.

Mr. Lewis: That is all.

Cross-Examination

By Mr. Bowen:

Q. With reference to that last question, Mr. Anderson, about how many transactions in wheat do you have a year in the normal course of business? A. That varies quite a lot.

Y. Could you give me an estimate of the transactions on wheat, barley, oats, and grain that you have any time in a year?

A. It would be hard to give an estimate, some years wheat is sold in large quantities, some small quantities, and it would be impossible to estimate the number of transactions that were made in any one given year.

Q. Would as many as 25 be too few?

A. I would say it would be too many.

Q. How many?

A. As I have said before, I can't estimate the number of transactions. [336]

Q. Then you would have difficulty in recalling of your memory and recollection whether or not you did or did not authorize Greely Elevator Company on January 10, '47 and October 3rd, '46 to a transaction in their books in your name, wouldn't you?

A. Will you state that question again, please.

(Testimony of Noel Anderson.)

Q. You have just stated, Mr. Anderson, that your best recollection is that you did not authorize Greely Elevator Company to enter the transactions referred to in that summary on October 3rd, '46 and January 10, '47, which transactions are entered in their books in your name. Now you state that to your best knowledge and recollection you did not authorize them to enter that transaction in your name; you didn't tell them not to, did you?

A. As far as that is concerned I knew where that wheat belonged and who it belonged to.

Q. You say you did?

A. Yes, and the rest of the members of the partnership knew.

Q. So it didn't matter to you personally whether it was entered in your name or not?

A. As far as I was concerned it made no difference.

Q. And you hadn't taken the trouble to advise Greely Elevator Company otherwise?

A. I had at different times but they have to be repeatedly reminded. [337]

Q. With reference to this controversial transaction or two of them in the middle of May, '46, Defendant's Exhibits 48 and 49, with reference to those two exhibits which recorded the transaction originally, which record is maintained by Greely Elevator Company, I refer you to this notation on each, dated May 17th, '46, as to Exhibit 48 and the same date as to Exhibit 49 states Loma in both cases and then "bought of Noel Anderson"; to the

(Testimony of Noel Anderson.)

best of your recollection is that a correct statement?

A. The name Noel Anderson appears there but I can't help it that they only put Noel Anderson on this because the contract is signed by Noel Anderson & Sons.

Q. No, that contract relates to Commodity Credit Corporation? A. The same wheat is involved.

Q. I realize that, Mr. Anderson, but we are talking about another transaction now, not the one by the Commodity Credit Corporation, but the storage of this grain with Greely Elevator Company. Now when you originally brought that grain in and stored it there they recorded that as having been brought and stored in the name——

Mr. Lewis: If the court please, I think there is no foundation for that statement.

Mr. Bowen: The exhibits speaks for itself.

Mr. Lewis: Well that is a little different. I don't think Mr. Chapman testified to any such thing. [338]

Mr. Bowen: I am not referring to Mr. Chapman's testimony. I am referring to the record which after seven years seems to be the best record of what happened there and not a faulty memory. This exhibit says "bought of Noel Anderson" "5/17/46 at Loma Station." In reference to Exhibit 48, 1,686 bushels of wheat; in reference to Exhibit 49, 1,723 bushels of wheat. I submit that that record unless explained otherwise speaks for itself.

Mr. Lewis: If the court please, you will recall

(Testimony of Noel Anderson.)

that under the examination of counsel for the Government Mr. Chapman identified positively these two exhibits as covering the same wheat as is in the two exhibits introduced by the plaintiff in Exhibits 25 and 26, and these exhibits are signed by Noel Anderson & Sons, and now he is attempting to impeach his own witness.

Mr. Bowen: I think that counsel for plaintiff misconstrues this record, your Honor, but to save your time we will ask the reporter to strike that question and all testimony taken in regard to it.

The Court: Very well.

Q. (By Mr. Bowen): With reference to Defendant's Exhibits 42 and 43 and 44, I refer you to this note, Mr. Anderson, and ask you to read that and then I will have a question.

A. The signature of the producer. [339]

Q. I believe I misled you. Oh, yes, that is right.

A. "The signature of the producer is to indicate intent to participate in the 1945 Agricultural Conservation Program and to request County Committee approval for the practices listed in Section 1. Filing of this form by the producer before May 1st, '45 is requested for participation in the 1945 Agricultural Conservation Program. No obligation upon the producer is created by filing this form, nor does failure to file the form have any significance other than ineligibility to apply for program payments."

Q. I think that is enough, thank you, sir. Now on rebuttal just now, Mr. Anderson, you stated that this Exhibit 42 which is entitled "1945 Agricultural

(Testimony of Noel Anderson.)

Conservation Program," and you indicated that it didn't relate to '45 activities. Did I misunderstand you?

A. The '45 work sheet relates only to '45 practices except for strip cropping, as I have stated before, which is a continuous process.

Mr. Bowen: No further questions, your Honor.

Mr. Lewis: That is all.

The Court: Any more rebuttal?

Mr. Lewis: No more rebuttal.

The Court: Very well, gentlemen. I suppose you need some time for brief after you receive a copy of the transcript. [340]

Mr. Bowen: If the court please, before you get into that business defendant wishes to renew his request for dismissal of this action and with your permission would like to argue it.

The Court: Well I don't believe you have got any more cases than I have already considered and this is a very complicated case, and there are circumstances and situations developed here that I don't find in any of these other cases, and it is just a question of what you believe. I think in any event if I permitted you to argue the case, I would overrule you because I have the same notion about it as I had when I overruled your motion at the conclusion of the plaintiff's case. I think that this is a case that is going to have to be studied very carefully. It is complicated and there are a good many circumstances here that I haven't found in some of the other cases that I have examined. Upon

receipt of the transcript the plaintiffs may have 30 days to submit a brief and the defendants 30 days, and 20 days for a reply brief. If you need additional time, either side, for that matter, why you will be given it. Well that seems to be the end of it.

The Court: Court will stand adjourned with the usual order of adjournment. (12:00 noon, [341] 12/13/52.)

In the District Court of the United States, in and for the District of Montana, Great Falls Division

State of Montana,
United States of America—ss.

I, Sidney O. Smith, do hereby certify that I am the Official Court Reporter in the above-entitled court; that the foregoing annexed transcript is a full, true and correct transcription of the proceedings had and taken in cause No. 1306, Noel Anderson, Plaintiff, vs. Collector of Internal Revenue, heard at Great Falls, Montana, on December 11, 12 and 13, 1952.

Dated this 16th day of February, 1953.

/s/ SIDNEY O. SMITH,
Official Court Reporter.

[Endorsed]: Filed February 16, 1952.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
District of Montana—ss.

I, H. H. Walker, Clerk of the United States District Court in and for the District of Montana, do hereby certify that the papers hereto annexed, and the accompanying Transcript of Evidence, are the originals filed in Case No. 1306, Noel Anderson, Plaintiff, vs. Thomas M. Robinson, Collector of the United States Internal Revenue for the District of Montana, Defendant, and designated by the Defendant as the record on appeal herein.

I further certify that the Complaint, Motion to Dismiss, Answer and Judgment, referred to in the designation, are contained in the Judgment Roll.

I further certify that the "Stipulation of the Parties" referred to in the designation, is Plaintiff's Exhibit No. 40, and is transmitted with the Exhibits in the case.

I further certify that the Exhibits accompanying this Transcript are the originals introduced in evidence at the trial of the cause, except Plaintiff's Exhibits Nos. 10 and 24, which are copies of and substituted for the originals withdrawn by order of Court.

Witness my hand and the seal of said court this 21st day of November, 1953.

[Seal] /s/ H. H. WALKER,
Clerk as Aforesaid.

[Endorsed]: No. 14142. United States Court of Appeals for the Ninth Circuit. Thomas M. Robinson, Collector of Internal Revenue for the District of Montana, Appellant, vs. Noel Anderson, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Montana.

Filed November 25, 1953.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14142

THOMAS M. ROBINSON, Collector of United
States Internal Revenue for the District of
Montana,

Appellant,

vs.

NOEL ANDERSON,

Appellee.

DESIGNATION OF RECORD TO BE PRINTED

The appellant hereby designates the entire record
on appeal to be printed.

/s/ H. BRIAN HOLLAND,
Assistant Attorney General
Tax Division,

By /s/ ANDREW D. SHARPE,
Chief, Trial Section.

[Endorsed]: Filed December 14, 1953.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS RELIED
UPON ON APPEAL

The appellant states that this is an appeal to the United States Court of Appeals for the Ninth Circuit from the judgment entered in the United States District Court for the District of Montana in the above-entitled case. Pursuant to the provisions of the rules of the United States Court of Appeals for the Ninth Circuit, appellant intends to rely on the following points:

1. The trial court erred in concluding that taxpayer Noel Anderson, his wife Agnes Anderson, and their two sons Robert M. and Noel J. Anderson in good faith and acting with a business purpose intended to join together as of January 1, 1945, for the tax year 1945 in the present conduct of the Anderson ranch as a partnership within the intentment of the laws of the United States pertaining to the internal revenue.

2. The trial court erred in finding that the Government erroneously and illegally collected from taxpayer Noel Anderson the sum of \$10,292.84 for 1945.

/s/ H. BRIAN HOLLAND,
Assistant Attorney General
Tax Division,

By /s/ ANDREW D. SHARPE,
Chief, Trial Section.

[Endorsed]: Filed December 14, 1953.